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**CODE OF LAWS
OF
SOUTH CAROLINA
1952**

1954 Cumulative Supplement

ANNOTATED

Prepared under the supervision and direction of the
Code Commissioner and the Committee on Statutory
Laws of the General Assembly of South Carolina

IN EIGHT VOLUMES

VOLUME 1

TITLES 1 TO 12

Place in Pocket of Volume 1 of Main Set

FURMAN R. GRESSETTE
ST. MATTHEWS, S. C.

THE R. L. BRYAN COMPANY
COLUMBIA, S. C.
1954

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NOTICE

This pocket supplement is not official. At the direction of the Committee on Statutory Laws the Acts as enacted have been edited in various particulars to conform them to the style and arrangement of the Code of 1952 and to make them more readily usable by the practitioner for ordinary work. For further details see the Foreword in the Pocket Supplement to Volume 1.

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FOREWORD

This Supplement is published pursuant to an agreement with the Committee on Statutory Laws (Hon. J. Carl Kearsce, Chairman, Hon. George L. Grantham, Hon. James B. Morrison, Hon. Paul M. Arant and Hon. James B. Moore).

The 1953 Supplement was used as a basis for the treatment of the 1954 provisions. The work was done under the direction and supervision of the Committee on Statutory on Laws and Hon. L. G. Merritt, Code Commissioner.

Statutes

This Supplement contains the general and permanent laws enacted at the 1952, 1953 and 1954 Regular Sessions of the General Assembly *except a 1954 act in the possession of the Governor permitting certain dental college students to treat patients at Whitten Village*. For local acts or acts of a temporary nature, reference should be made to the Acts and Joint Resolutions of 1952, 1953 and 1954.

Treatment of Statutes

Amendments to existing laws or sections of the Code of Laws of 1952 are generally inserted under the same section numbers as appear in the Code. New acts are codified under the appropriate Titles and chapters.

Where a Code section consists of several parts and an amending act which changes only one part or adds a new part, the remainder of the section being unaffected, the amended or new part only has been set out in the Supplement, together with a note calling attention to the fact. In addition, certain acts which might be deemed sufficiently general to be included in a revision of the Code but nevertheless affect only one locality or area have been incorporated by reference only.

As indicated in the Notice placed in each pocket part, the Acts as enacted have at the direction of the Committee on Statutory Laws been edited in various particulars to conform them to the style and arrangement of the Code of 1952 and to make them more readily usable by the practitioner for ordinary work. For example, long sections of the Acts have been frequently divided into several smaller sections in the Supplement; when the sequence of sections in an Act did not appear to be completely logical or to conform to similar sequences used in the Code, the order of the sections has been rearranged to follow what appeared to be the more logical order; punctuation, capitalization, the use of italics, etc., has been changed to conform to the usage of the Code; errors of grammar and punctuation when noted and when no ambiguity of meaning involved have been corrected; long tautological phrases have been simplified and similar other changes have been made. And every effort has been made to avoid making any change which could possibly affect the sense. Where errors in grammar, misplaced punctuation, etc., raised an ambiguity as to the intent, the errors have not been corrected but the Act has been printed in such respects precisely as enacted. Nevertheless, because this editing has taken place, in the interest of the general utility of the work, it is suggested that in all matters of great importance or doubtful meaning the original Act as printed in the Acts and Joint Resolution for the years 1952, 1953 and 1954 be consulted.

Historical References

The full historical citation generally is given following each new or amended section except in the instances mentioned in the second paragraph above.

Annotations

The annotations have been brought to date with constructions from South Carolina cases appearing in the South Carolina Reports through Volume 225, page 180, the Southeastern Reporter, Second Series, through Volume 78, page 890 and the Westbrook Advance Sheets through opinions filed during the week ending November 6, 1954. Constructions have also been taken from Federal cases which arose in South Carolina, concluding with Volume 123 F. Supp. page 959, Volume 125 F. (2d), page 656, Volume 347 United States Reports and Volume 74 Supreme Court Reporter. Annotations have also been prepared from certain opinions of the Attorney General to September 17, 1954.

Index

The general index in the Code of 1952 should first be consulted to ascertain if the subject desired is therein, and if the subject is located, then the particular code section number should be consulted in the Supplement to see if it has been affected. The supplemental index generally contains references only to new sections and to amended sections when, because of the amendment, the original section has been substantially changed. Italicized portions of the supplemental index indicate references to the Code of 1952.

Rules and Regulations

Rules and Regulations have been brought up to those filed in the Secretary of State's office October 26, 1954.

Tables

A table showing where the acts codified in the Supplement have been placed and a table of all Code and 1953 Supplement sections amended or repealed appear in the supplement to Volume 8, which also contains the general index.

Editorial Work and Printing

The editorial work was done by Furman R. Gressette with principal assistance from S. Henry Edmunds, mainly the annotations, T. A. Houser and W. R. Symmes. The printing, binding and distribution by The R. L. Bryan Company.

FURMAN R. GRESSETTE

THE R. L. BRYAN COMPANY

Code of Laws of South Carolina

1952

1954 CUMULATIVE SUPPLEMENT

Title 1.

Administration of the Government.

- Chap. 1. General Provisions, §§ 1-49.1 to 1-81.
2. Governor and Lieutenant Governor, §§ 1-102 to 1-121.
3. Secretary of State, § 1-201.
4. Attorney General and Solicitors, §§ 1-231 to 1-260.
5. Code Commissioner and Committee on Statutory Laws, §§ 1-301 to 1-316.
6. State Budget and Control Board, § 1-353.1.
7. Grounds and Buildings, §§ 1-461.1 to 1-461.2.
9. Census, §§ 1-600, 1-601.
12. State Finances, §§ 1-745 to 1-849.

CHAPTER 1.

GENERAL PROVISIONS.

Article 4.

Provisions Affecting Only State Officers, Board, etc.

- Sec.
1-49.1. Deductions for Federal taxes.

Article 5.

Provisions Affecting Local or Local and State Officers, etc.

- 1-64. Public employees to give copy of
statement taken to person mak-
ing it.

ARTICLE 4.

Provisions Affecting Only State Officers, Board, etc.

§ 1-49.1. Deductions for Federal taxes.

The Comptroller General or any State department or agency of the State Government designated as a withholding agent by him shall make deductions for taxes required to be deducted or withheld by the Federal Government from the compensation of State employees and pay over to the Director of Internal Revenue, or any agency designated to receive such funds, all collections so deducted or withheld.

1954 (48) 1566.

ARTICLE 5.

Provisions Affecting Local or Local and State Officers, etc.

§ 1-54. Contracts in excess of tax or appropriation; diverting public funds.

Applied in *McKown v. Daniel*, 217 S. v. *Greenville County*, 218 S. C. 181, 62 S. C. 510, 61 S. E. (2d) 163 (1950); *Beacham* E. (2d) 92 (1950).

§ 1-64. Public employees to give copy of statement taken to persons making it.

Whenever any person employed by the State or any county, city or municipality thereof, or any part of any such governing body, shall take a written statement in any investigation of any kind or nature from any person, the person receiving or taking the written statement shall give to the person making the statement a copy thereof and shall obtain from the person making the statement a signed receipt for the copy so delivered.

1952 (47) 1977.

Cross reference. — As to use of such statement as evidence, see §§ 26-7.1 and 26-7.2.

The duty imposed on investigating officers by this section is with respect to

statements which they "shall take", necessarily meaning after the passage of this section. *State v. Anderson*, 224 S. C. 419, 79 S. E. (2d) 455.

ARTICLE 7.

Code of 1952.

§ 1-81. Adoption of Code.

The Report of the Code Commissioner made to the General Assembly for the year 1951 pursuant to Section 5, Article VI, of the Constitution of South Carolina, 1895, with the addition of the general and permanent provisions enacted during 1951 and other additions and amendments, eliminations, corrections, general make-up and arrangement made thereto is hereby adopted as the Code of Laws of South Carolina, 1952 and said Code is hereby declared to be the only general statutory law of the State on the 8th day of January, 1952.

1953 (48) 2.

Applied in *Wagenberg v. Charleston Wood Products*, 122 F. Supp. 745 (1954).

CHAPTER 2.

GOVERNOR AND LIEUTENANT GOVERNOR.

Article 1.

General Provisions Concerning Governor.

Sec.

1-102. Salary of Governor.

Article 3.

Appointment and Removal of Officers.

Sec.

1-121. Filling vacancies when Senate not in session.

ARTICLE 1.

General Provisions Concerning Governor.

§ 1-102. Salary of Governor.

The Governor shall receive an annual salary of fifteen thousand dollars.

1942 Code § 3090; 1932 Code § 3090; Civ. C. '22 § 775; Civ. C. '12 § 691; Civ. C. '02 § 621; G. S. 473; R. S. 537; 1865 (13) 350; 1893 (21) 416; 1919 (31) 4; 1924 (33) 1182; 1948 (45) 1716; 1954 (48) 1566.

Effect of amendment.—Amendment increased salary to fifteen thousand dollars from twelve thousand dollars.

ARTICLE 3.

Appointment and Removal of Officers.

§ 1-121. Filling vacancies when Senate not in session.

* * *

(9) The members of the State Development Board.

* * *

1942 Code § 3093; 1932 Code § 3093; Civ. C. '22 § 778; Civ. C. '12 § 694; Civ. C. '02 § 624; G. S. 476, 477; R. S. 540; 1868 (14) 66; 1870 (14) 376; 1871 (15) 690; 1876 (16); 1877 (16) 249; 1878 (16) 571, 609, 766; 1882 (18) 1111; 1890 (20) 697;

1896 (22) 154; 1901 (23) 701; 1920 (31) 704, 908; 1922 (32) 938; 1945 (44) 156; Const. 1895 Art. 12 § 2, Amend; 1954 (48) 1745.

Effect of amendment.—The amendment changed Board of Research, Planning and Development to State Development Board

in Item (9). The section otherwise remains effective, although not reproduced.

§ 1-122. Officers Governor shall appoint.

How vacancies in offices of county directors created.—The long-continued failure of a majority, including the Senator, of the York County legislative delegation to recommend persons for appointment as members of the county board of directors pursuant to the terms of the York County

Government Act created vacancies in the offices of county director and gave rise to the power of the Governor to appoint under the general laws, §§ 14-302 and this section. *Bradford v. Byrnes*, 221 S. C. 255, 70 S. E. (2d) 228 (1952).

CHAPTER 3.

Secretary of State.

Sec.

1-201. Salary.

§ 1-201. Salary.

The Secretary of State shall receive an annual salary of ten thousand dollars, and fees or perquisites of the office shall be paid into the Treasury of the State.

1942 Code § 3101; 1932 Code § 3101; Civ. C. '22 § 783; Civ. C. '12 § 699; G. S. 483, 484; R. S. 546, 547; 1786 (4) 751; 1865 (13) 350; 1924 (33) 1182; 1948 (45) 1716; 1954 (48) 1566.

Effect of amendment.—Amendment increased salary to ten thousand dollars from seven thousand five hundred dollars.

CHAPTER 4.

ATTORNEY GENERAL AND SOLICITORS.

Article 1.

Attorney General and Assistants.

Sec.

1-231. Salary.

Article 2.

Solicitors.

1-251.1. Further duties.

Sec.

1-255.1. Actions against the State.

1-258. Assistant solicitor for fifth judicial circuit.

1-259. Assistant to circuit solicitor, seventh judicial circuit.

1-260. Assistant to circuit solicitor, ninth judicial circuit.

ARTICLE 1.

Attorney General and Assistants.

§ 1-231. Salary.

The Attorney General shall receive a salary at the rate of ten thousand dollars per annum.

1942 Code § 3112; 1932 Code § 3112; Civ. C. '22 § 795; Civ. C. '12 § 710; Civ. C. '02 § 638; G. S. 495; R. S. 555; 1877 (16) 247; 1880 (17) 372; 1919 (31) 4; 1924 (33) 1182; 1946 (44) 2596; 1948 (45) 1716; 1954 (48) 1566.

Effect of amendment.—Amendment increased salary to ten thousand dollars from seven thousand five hundred dollars.

ARTICLE 2.

Solicitors.

§ 1-251.1. Further duties.

The several solicitors of the State shall attend all inquests and preliminary hearings in capital cases when requested by the coroner or the sheriff, and shall within their respective circuits in cooperation with, and as assigned by the Attorney General, represent in all matters, both civil and criminal, all institutions, departments and agencies of the State. Likewise in criminal matters outside their circuits, and

in extradition proceedings in other States, they shall be subject to the call of the Attorney General, who may exclusively in his discretion so assign them in case of the incapacity of the local solicitor or otherwise. The solicitors shall perform the services herein required, and in no instance, civil or criminal, shall they receive for such services any additional compensation, except that they shall be entitled to expense allowance, as provided for State employees and officers, when performing such services outside of their respective circuits.

1954 (48) 1566.

§ 1-255.1. Actions against the State.

The solicitors shall not engage in litigation against the State or any of its departments.

1954 (48) 1566.

§ 1-258. Assistant solicitor for fifth judicial circuit.

The circuit solicitor of the fifth judicial circuit may appoint a competent attorney, who is a resident of the circuit, as an assistant solicitor, who shall perform any and all of the duties and functions imposed by law upon the circuit solicitor as the solicitor of the circuit shall authorize, designate and direct. The assistant solicitor shall be appointed by the solicitor of the fifth judicial circuit to serve for the same term as the solicitor and shall receive as compensation for his services five thousand dollars per year. Four thousand and four hundred dollars of this amount shall be paid by *Richland* County and six hundred dollars shall be paid by *Kershaw* County.

1953 (48) 139.

§ 1-259. Assistant to circuit solicitor, seventh judicial circuit.

The circuit solicitor of the seventh judicial circuit may appoint a competent attorney, who is a resident of *Spartanburg* County, as assistant solicitor. He shall perform any and all of the duties and functions imposed by law upon the circuit solicitor in *Spartanburg* County as the solicitor of the circuit shall authorize, designate and direct. The assistant solicitor shall be appointed by the solicitor of the seventh judicial circuit and shall, after appointment, be commissioned by the governor.

The solicitor of the seventh judicial circuit may remove the assistant solicitor from office at his pleasure and in no event shall the assistant solicitor be appointed for a period beyond the term of office of the circuit solicitor. The assistant solicitor shall receive from *Spartanburg* County as compensation for his services the sum of thirty-four hundred dollars per year, payable the first and fifteenth of each month, and eight hundred dollars per year for travel.

The assistant solicitor shall appear and represent the State in magistrates' courts when requested by the sheriff's department or the highway patrol located in *Spartanburg* County. He shall further prosecute appeals from magistrates' courts in said county.

1953 (48) 401.

§ 1-260. Assistant to circuit solicitor, ninth judicial circuit.

The circuit solicitor of the ninth judicial circuit may appoint a competent attorney, who is a resident of the circuit, as an assistant who shall perform such of the duties and functions imposed by law upon the circuit solicitor as the solicitor of the circuit shall authorize, designate and direct. Such assistant shall enter upon his duties upon the approval of a majority of the legislative delegations within the circuit. He shall receive as compensation for his services such amount as shall be appropriated by the counties in the circuit, eighty per cent. of such amount to be paid by *Charleston* County and twenty per cent. to be paid by *Berkeley* County.

1952 (47) 2076.

CHAPTER 5.

CODE COMMISSIONER AND COMMITTEE ON STATUTORY LAWS.

Sec.	Sec.
1-301. Election, Term and Salary of Code Commissioner.	1-307.1. Pocket supplements; revised volume of Code.
1-302. Vacancy.	1-308. Contracts for pocket supplements or revision of volumes.
1-305. Code Commissioner secretary of Committee and Director of Legislative Council; Assistants.	1-316. Same; signatures and distribution thereof.
1-307. Preparation of annual cumulative pocket supplements.	

§ 1-301. Election, term and salary of Code Commissioner.

A Code Commissioner shall be elected by a majority vote of the Legislative Council, and shall hold office for a term of four years and until his successor shall have been elected and qualified. He shall receive such salary as may be provided by the General Assembly, not to exceed eight thousand dollars per year.

1942 Code § 2111; 1932 Code § 2111; Civ. C. '22 § 75; Civ. C. '12 § 65; Civ. C. '02 § 62; 1901 (23) 697; 1918 (30) 798; 1934 (38) 1329; 1940 (41) 1940; 1954 (48) 1761.

Effect of amendment.—1954 amendment changed election from the General Assembly, reduced the term from ten years and added last sentence.

§ 1-302. Vacancy.

In case of vacancy from any cause, the Legislative Council shall, as soon as practicable, elect a successor for the unexpired term.

1942 Code § 2111; 1932 Code § 2111; Civ. C. '22 § 75; Civ. C. '12 § 65; Civ. C. '02 § 62; 1901 (23) 697; 1918 (30) 798; 1934 (38) 1329; 1940 (41) 1940; 1954 (48) 1761.

Effect of amendment.—Prior to 1954 amendment vacancy was filled by the General Assembly or the Governor.

§ 1-305. Code Commissioner secretary of Committee and Director of Legislative Council; assistants.

The Code Commissioner shall act as secretary for the Committee on Statutory Laws and shall be the Director of the Legislative Council. As such Director he shall employ, subject to the approval of the Legislative Council, such clerical and other assistants as may be necessary for the proper performance of the duties of the several divisions of the Legislative Council as provided for in §§ 30-105 and 30-106.

1942 Code § 2118; 1932 Code § 2118; 1931 (37) 168; 1940 (41) 1940; 1954 (48) 1761.

Effect of amendment.—1954 amendment added all after "Committee on Statutory Laws."

§ 1-307. Preparation of annual cumulative pocket supplements.

There shall be prepared and published during the year 1953 and annually thereafter, under the supervision and direction of the Committee on Statutory Laws and the Code Commissioner, cumulative pocket supplements to the Code of Laws, in form suitable for insertion in the appropriate volumes of the Code of Laws, showing, in such detail as the Committee and Commissioner may deem proper and sufficient:

(1) All general and permanent statutes enacted during the 1952 and subsequent annual sessions of the General Assembly whereby the general statutory law as contained in the Code of Laws has been added to, amended, repealed, or otherwise affected;

(2) All changes, since the adoption of the Code, in the Constitution of the United States, the Constitution of South Carolina, the rules of the Supreme Court, the circuit courts and the probate courts of South Carolina and the rules and regulations issued by departments and agencies of the State; and

(3) All decisions of the Supreme Court of South Carolina and of the courts of the United States, subsequent to those referred to in the then existing Code of Laws, construing the general statutory law and the Constitution of South Carolina.

1942 Code § 2118; 1932 Code § 2118; 1931 (37) 168; 1940 (41) 1940; 1953 (48) 223.

Effect of amendment. — The principal change effected by the 1953 amendment was in providing for pocket parts as supplements. But the section was entirely rewritten and numerous other changes were made.

§ 1-307.1. Pocket supplements; revised volume of Code.

If at any time the pocket supplement of any volume of the Code of Laws shall, in the judgment of the Committee and the Commissioner, become too bulky for convenient use, the Committee and the Commissioner shall cause to be prepared and published under their supervision and direction and shall submit to the General Assembly for its consideration a revised volume setting forth the contents of the original volume revised and codified to include the effect of such cumulative pocket supplement; and the General Assembly, having considered and approved such revision, shall, by bill passed under the formalities prescribed by the Constitution for the passage of laws, declare such revised volume to be substituted for the original volume as a part of the then existing Code of Laws and, to the extent of its contents, the only general statutory law of the State. But no pocket supplement shall be prepared or published for the year in which the Code Commissioner shall make his decennial report to the General Assembly as required by § 1-309 of the Code.

1953 (48) 223.

§ 1-308. Contracts for pocket supplements or revision of volumes.

The Committee on Statutory Laws may contract for the preparation and publication of the annual cumulative pocket supplements to the Code of Laws and such contracts may be awarded for a period of not more than five years under such terms as the Committee may see fit; and, whenever the Committee and the Code Commissioner shall deem it advisable that any volume of the Code be revised and republished as provided in § 1-307.1, the Committee on Statutory Laws shall contract for such revision and republication.

1942 Code § 2118; 1932 Code § 2118; 1931 (37) 168; 1940 (41) 1940; 1953 (48) 223.

Effect of amendment.—The amendment completely rewrote the section.

§ 1-316. Same; signatures and distribution thereof.

Within three days after receiving such page proof corrected from the Code Commissioner the public printer shall print the same in signatures and shall deliver as many of such signatures to the Code Commissioner as the Commissioner may order. The Code Commissioner on receipt of said signatures shall send a copy of such signatures to each of the following officers: the Governor, Supreme Court justices, clerk of the Supreme Court, circuit judges, circuit solicitors, county judges, county solicitors, clerk of the court of each county, Attorney General, Secretary of State, Comptroller General, Adjutant General, State Treasurer, Chief Bank Examiner, Chairman of Tax Commission, Chief Highway Commissioner, State Health Officer, Director of the Division of Game of the South Carolina Wildlife Resources Department, chairman of the Public Service Commission, Commissioner of Agriculture, Insurance Commissioner, State Budget and Control Board, State Superintendent of Education, State Librarian, clerk of the House of Representatives, clerk of the Senate, secretary of the Historical Commission and the members of the General Assembly. The public printer shall not distribute any printed matter from such signatures of the Acts and Joint Resolutions unless authorized as hereinabove provided.

1942 Code § 2114; 1932 Code § 2114; 1927 (35) 268; 1934 (38) 1329; 1941 (42) 119; 1948 (45) 1643; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Director of the Division of Game for the former Chief Game Warden.

CHAPTER 6.

STATE BUDGET AND CONTROL BOARD.

Sec.

1-353.1. Board may purchase supplies for counties.

§ 1-353.1. Board may purchase supplies for counties.

The purchasing and property division of the State Budget and Control Board may purchase supplies and equipment for the counties of the State when requested to do so by the governing body of any county. The purchases shall be made on the same terms and under the same rules and regulations as now provided for the purchase of supplies by the purchasing and property division. When supplies or equipment are purchased for any county, as provided for herein, the cost of such supplies and equipment shall be directly borne by the county concerned, which shall be billed direct therefor.

1953 (48) 401.

CHAPTER 7.

GROUND AND BUILDINGS.

Article 4.

Sec.

General Provisions.

Sec.

1-461.1. Public bidding required on certain construction contracts.

1-461.2. Same; inapplicable to certain penitentiary buildings.

ARTICLE 4.

General Provisions.

§ 1-461.1. Public bidding required on certain construction contracts.

No public building, or addition thereto, constructed from State funds, costing more than ten thousand dollars shall be constructed in the State unless competitive bids for the contract therefor shall have been advertised in a newspaper of general circulation in the State, at least three times over a period of thirty days. The right to reject any and all bids shall be reserved. All bids shall be opened at the same time. All proposals shall be opened in public and shall be recorded in the minutes of the board or governing body, and the award shall be made to the lowest responsible bidder, taking into consideration quality of workmanship, past performance of low bidder and time specified in the proposals for the performance of contract. A performance bond shall be required from the successful bidder.

1954 (48) 1506.

§ 1-461.2. Same; inapplicable to certain penitentiary buildings.

Nothing in § 1-461.1 shall prevent the Penitentiary from constructing its own buildings with its own labor without such advertising.

1954 (48) 1506.

CHAPTER 9.

CENSUS.

Sec.

1-600. United States census of 1950 adopted.

Sec.

1-601. [Repealed.]

1-600.1. Same; population of Newberry County for distribution of State funds.

§ 1-600. United States census of 1950 adopted.

The United States census of 1950 is hereby adopted as the true and correct enumeration of the inhabitants of the several counties, municipalities and other governmental subdivisions of this State.

1952 (47) 1694.

§ 1-600.1. Same; population of Newberry county for distribution of State funds.

In the distribution of funds by the State among the several counties on the basis of population, the population in the Macedonia district, recently annexed to *Newberry* County, and containing one hundred and eight persons, shall be added to the population of *Newberry* County as shown by the official 1950 census of the United States.

1954 (48) 2410.

§ 1-601. United States census of 1940 adopted.

Repealed by A. & J. R. 1952 (47) 1694.

Cross reference.—See now § 1-600.

CHAPTER 12.

STATE FINANCES.

Article 3.

Deposit of State Funds.

Sec.

1-745. Collateral as security.

Article 4.11.

The General Fund Reserve.

1-781. Established.

1-781.1. Maintenance.

1-781.2. Use.

Article 6.

Comptroller General.

Sec.

1-812. Salary, fees, etc.

Article 7.

State Treasurer.

1-841. Salary and clerks.

1-849. Funds from certain sales in Clark Hill project sent to counties.

ARTICLE 1.

General Provisions.

§ 1-701. Money to be spent only for purposes specified.

Applied in *McKown v. Daniel*, 217 S.

C. 510, 61 S. E. (2d) 163 (1950).

§ 1-702. Disbursing officers exceeding or transferring appropriations.

Applied in *McKown v. Daniel*, 217 S.

C. 510, 61 S. E. (2d) 163 (1950).

ARTICLE 3.

Deposit of State Funds.

§ 1-745. Collateral as security.

Any such depository may furnish, instead of such surety bond in an approved surety company, as security for such deposit or deposits, United States Government bonds, Federal Farm Loan bonds issued by Federal Land Banks pursuant to the Federal Farm Loan Act as amended, Federal Intermediate Credit Bank debentures issued by Federal Intermediate Credit Banks pursuant to the Federal Farm Loan Act as amended, debentures issued by the Central Bank for Cooperatives organized under the Farm Credit Act of 1933 or bonds or other obligations of this State or any political subdivision thereof. Such collateral security shall be filed with the proper officers within one week after deposit shall be made, or at the time of deposit, if required.

1942 Code § 2200; 1932 Code § 2200; 1925 (34) 273; 1926 (34) 1049; 1952 (47) 1892.

Effect of amendment. — The section "Bank bonds" in lieu of the bonds issued formerly permitted the use of "Federal Land Bank bonds" and "Joint Stock Land Bank bonds" under the Federal Farm Loan Act and the Farm Credit Act of 1933.

ARTICLE 4.11.

*The General Fund Reserve.***§ 1-781. Established.**

There shall be established and maintained a fund which shall be carried in a special account in the State Treasury, which shall be known and designated as "The General Fund Reserve". The maximum amount of such reserve shall be three million dollars.

1954 (48) 1566.

§ 1-781.1. Maintenance.

On or before September 30 of each year the State Budget and Control Board shall determine the amount by which the State's revenues applicable thereto exceeded the sum of (a) actual expenditures for normal maintenance and operation of the State Government for the fiscal year immediately preceding including expenditures to political subdivisions of the State based on established percentages of revenues but not including expenditures for highway purposes and (b) unexpended balances of continuing appropriations made during the fiscal year immediately preceding. From such excess revenues so determined, if any, there shall be transferred to such reserve an amount sufficient to bring it to the sum of three million dollars but not in excess thereof.

1954 (48) 1566.

§ 1-781.2. Use.

The General Fund Reserve shall be used by transfer to the State's General Fund as directed by the Board to cover or apply to any annual deficit which may occur by reason of general fund expenditures in any year plus other outstanding appropriation liabilities exceeding revenues applicable thereto and for no other purpose.

1954 (48) 1566.

ARTICLE 6.

*Comptroller General.***§ 1-812. Salary, fees, etc.**

The Comptroller General shall receive an annual salary of ten thousand dollars. The fees and prerequisites of the office shall be paid into the State Treasury.

1942 Code § 3135; 1932 Code § 3135; Civ. C. '22 § 831; Civ. C. '12 § 746; Civ. C. '02 § 672; G. S. 529; R. S. 588; 1801 (5) 410, 411; 1868 (14) 135; 1877 (16) 247; 1893 (21) 416; 1900 (23) 418; 1919 (31) 4; 1921 (32) 204; 1924 (33) 1182; 1948 (45) 1716; 1954 (48) 1566.

Effect of amendment.—The amendment increased salary to ten thousand dollars from seven thousand five hundred dollars.

ARTICLE 7.

*State Treasurer.***§ 1-841. Salary and clerks.**

The State Treasurer shall receive a salary at the rate of ten thousand dollars per annum. He shall employ a chief clerk and two bookkeepers.

1942 Code § 3159; 1932 Code § 3159; Civ. C. '22 § 854; Civ. C. '12 § 770; Civ. C. '02 § 696; G. S. 555; R. S. 613; 1879 (17) 128; 1893 (21) 416; 1919 (31) 4; 1924 (33) 1182; 1948 (45) 1716; 1954 (48) 1566.

Effect of amendment.—The amendment increased salary to ten thousand dollars from seven thousand five hundred dollars.

§ 1-849. Funds from certain sales in Clark Hill project sent to counties.

The State Treasurer shall remit all funds received by him from the United States Government, or any agency thereof, when such funds are derived from the sale or lease of any property belonging to the United States Government and

located in the Clark Hill Project area, to the treasurer of the county in which the transaction arose. Any such funds received by a county treasurer shall be placed in the general county fund.

1952 (47) 2169.

Title 2.

Aeronautics.

Chap. 4. Particular Airports, §§ 2-390 to 2-394.

CHAPTER 1.

GENERAL LEGAL PRINCIPLES.

ARTICLE 1.

Uniform State Law for Aeronautics.

§ 2-6. Liability for damages.

The effect of this section is to make the infliction of injury or damage by the operation of an airplane a wrongful act in itself, and recovery may be had against the United States under the Federal Tort

Claims Act for damages caused by the falling of government airplanes operated by employees of the government on government business. *United States v. Praylou*, 208 F. (2d) 291 (1953).

§ 2-8. Crimes and torts.

Applied in *Eastern Air Lines v. United States*, 110 F. Supp. 491 (1952).

CHAPTER 3.

AIRPORTS GENERALLY.

ARTICLE 1.

Uniform Airports Act.

§ 2-117. How purchase price raised.

As to petition of freeholders for bond election, see *Evatte v. Cass*, 217 S. C. 62, 59 S. E. (2d) 638 (1950).

§ 2-118. Finances.

The establishment of a municipal airport is for a "public purpose" within the meaning of constitutional provisions restricting

the power of taxation to such purpose. *Evatte v. Cass*, 217 S. C. 62, 59 S. E. (2d) 638 (1950).

CHAPTER 4.

PARTICULAR AIRPORTS.

Article 18.

Marlboro County.

Sec.

2-391 to 2-394. [Repealed.]

Sec.

2-390. Duties and powers of Board of County Highway Commissioners for Marlboro County.

ARTICLE 18.

Marlboro County

§ 2-390. Duties and powers of Board of County Highway Commissioners for Marlboro County.

Provision of § 1 of A. & J. R. 1953 (48) 1116 make up this section.

§§ 2-391 to 2-394. Marlboro County Airport Board.

Repealed by A. & J. R. 1953 (48) 1116.

Title 3.

Agriculture.

- Chap. 1. General Provisions, §§ 3-3.1 to 3-30.
2. State Crop Pest Commissioner; Insecticide and Fungicides, §§ 3-162 to 3-170.
- 2.1. South Carolina Economic Poison Law, §§ 3-187 to 3-187.81.
3. Marketing of Agricultural Products, §§ 3-266.21 to 3-299.
5. Fertilizers, §§ 3-501 to 3-586.
- 5.1. South Carolina Fertilizer Law of 1954, §§ 3-590 to 3-590.116.
6. Commercial Feeding Stuffs, §§ 3-603 to 3-621.

CHAPTER 1.

GENERAL PROVISIONS.

Article 1.	Article 2.
Department and Commissioner of Agriculture.	Agricultural Duties of Clemson College.
Sec.	Sec.
3-3.1. Bond.	3-30. Clemson to receive and use grants under act.

ARTICLE 1.

Department and Commissioner of Agriculture.

§ 3-3.1. Bond.
 The bond of the Commissioner shall be in the sum of fifty thousand dollars and his liability thereon shall not extend to losses incurred in bonded warehouses except in case of tort or neglect of duty on his part.

1954 (48) 1566.
 Reduction of bond effective as of beginning of fiscal year beginning July 1, 1954. Atty. Gen. Op., June 25, 1954.

ARTICLE 2.

Agricultural Duties of Clemson College.

§ 3-30. Clemson to receive and use grants under act.

The board of trustees of The Clemson Agricultural College of South Carolina may receive such grants and use them for the benefit of the State in accordance with the terms and conditions expressed in the act of Congress referred to in § 3-29; *provided*, that the grants for the more complete endowment and support of land-grant colleges shall be equally divided between The Clemson Agricultural College of South Carolina and South Carolina State College as now provided by law.

1942 Code § 5806-2; 1936 (39) 1448; 1954 (48) 1722.
Effect of amendment.—The amendment changed the name of the Colored, Normal, Industrial, Agricultural and Mechanical College of South Carolina to South Carolina State College.

CHAPTER 2.

STATE CROP PEST COMMISSION; INSECTICIDES AND FUNGICIDES

Article 4.
 Insecticides and Fungicides.

Sec.
 3-162 to 3-166. [Repealed.]
 3-169 to 3-170. [Repealed.]

ARTICLE 4.

*Insecticides and Fungicides.**

§§ 3-162 to 3-166. **Arsenical or other preparations for boll weevil control must comply with specifications; powers of commission.**

Repealed A. & J. R. 1954 (48) 1401.

Cross reference.—See now §§ 3-187 et seq.

§§ 3-169 and 3-170. **Penalties for violating other sections; damages.**

Repealed A. & J. R. 1954 (48) 1401.

Cross reference.—See now §§ 3-187 et seq.

CHAPTER 2.1.

SOUTH CAROLINA ECONOMIC POISON LAW.

Article 1.

General Provisions.

- Sec.
- 3-187. Short Title.
- 3-187.1. Definitions.
- 3-187.2. Medicinal or toilet preparations exempted.
- 3-187.3. Commission may delegate authority to its employees.
- 3-187.4. Commission may cooperate with public agencies.
- 3-187.5. Designation of pests; toxicity to man and coloring of economic poisons.
- 3-187.6. Submission of complete formula.
- 3-187.7. Changes in labeling of formula not to lower efficacy of product.
- 3-187.8. Rules and regulations; names in ingredient statements.
- 3-187.9. Collection and examination of samples of economic poisons devices; sales by pest control or custom operators; reports.
- 3-187.10. Chemical analysis; collectors of samples.
- 3-187.11. Distribution, sale or transportation of certain economic poisons unlawful.
- 3-187.12. Sale of economic poisons for experimental purposes.
- 3-187.13. Alteration, etc. of labels or change of substance in economic poisons unlawful.
- 3-187.14. Revelation of information relative to formulas.
- 3-187.15. Interference with the commission.
- 3-187.16. Refusal of commission access to business records unlawful.
- 3-187.17. Guaranties or undertaking required by § 3-187.77.
- 3-187.18. Invalidity.

Article 2.

Registrations.

- 3-187.41. Registration required for distribution; sale of transportation.

Sec.

- 3-187.42. Products registered under Federal Insecticide, Fungicide, and Rodenticide Act.
- 3-187.43. Shipments from one plant to another operated by same person.
- 3-187.44. When commission shall register article.
- 3-187.45. Statement registrant must file.
- 3-187.46. Same; renewal.
- 3-187.47. Registration of brands and grades; inspection fee.
- 3-187.48. No registration charge after payment of annual fees aggregating \$100.00.
- 3-187.49. Registration of several products as single economic poison.
- 3-187.50. Change in labeling or formula during registration period.
- 3-187.51. Expiration of registration.
- 3-187.52. Renewal of certificates.
- 3-187.53. Refusal of registration for non-compliance with chapter; notify registrant.
- 3-187.54. Refusal or revocation of registration for fraud and deceit; hearing required.

Article 3.

Enforcement, Penalties; etc.

- 3-187.71. Recovery of damages against seller.
- 3-187.72. Service of process generally on foreign corporation or non-resident.
- 3-187.73. Consent to service of process and jurisdiction by sellers.
- 3-187.74. Interest of enforcement official.
- 3-187.75. Minor infractions.
- 3-187.76. Penalties.
- 3-187.77. Same; exceptions as to § 3-187.11.
- 3-187.78. Each sale violation a separate offense.
- 3-187.79. Notice to violators; hearing; prosecutions.
- 3-187.80. Issuance of "stop sale, use or removal" orders; appeal; release.
- 3-187.81. Commission may seize nonconforming products; disposition.

* See §§ 3-187 et seq. for South Carolina Economic Poison Law.

ARTICLE 1.

General Provisions.§ 3-187. **Short title.**

This chapter shall be known as the South Carolina Economic Poison Law.
1954 (48) 1401.

§ 3-187.1. **Definitions.**

For the purpose of this chapter—

(1) The term “*economic poison*” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects, rodents, nematodes, fungi, bacteria, weeds, shrubs or other forms of plant or animal life or viruses (except viruses on or in living man or other animals) which the South Carolina State Crop Pest Commission shall declare to be a pest except household disinfectants which are subject to existing law.

(2) The term “*device*” means any instrument or contrivance intended for trapping, destroying, repelling or mitigating insects, nematodes or rodents or destroying, repelling or mitigating fungi, bacteria, weeds, shrubs or such other pests as may be designated by the Commission but not including simple mechanical devices such as rat traps.

(3) The term “*insecticide*” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

(4) The term “*fungicide*” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus, pathogen or agency that may cause plant disease.

(5) The term “*nematocide*” means any substance intended for preventing, destroying, repelling, or mitigating nematodes, other worms or any other invertebrates which are destructive, constitute a liability and may be classified as pests.

(6) The term “*rodenticide*” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Commission shall declare to be a pest.

(7) The term “*herbicide*” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed or shrub.

(8) The term “*insect*” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes and wood lice.

(9) The term “*fungi*” means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses except those on or in living man or other animals.

(10) The term “*weed*” means any plant which grows where not wanted.

(11) The term “*ingredient statement*” or “*guaranteed analysis statement*” means (a) a statement of the name and percentage by weight of each active ingredient, together with the total percentage by weight of the inert ingredients, in the economic poison or (b) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option (a) shall apply if the preparation is highly toxic to man, determined as provided in § 3-187.5; and in addition, in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each stated as elemental (metallic) arsenic.

(12) The term "*active ingredient*" means an ingredient which will prevent, destroy, repel or mitigate insects, fungi, nematodes, rodents, weeds and other pests.

(13) The term "*inert ingredient*" means an ingredient which is not an active ingredient.

(14) The term "*antidote*" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(15) The term "*person*" means any individual, partnership, association, corporation or an organized group of persons whether incorporated or not.

(16) The term "*South Carolina State Crop Pest Commission*" or "*Commission*" means those members of the board of trustees of The Clemson College of South Carolina who are authorized by the Legislature to constitute the State Crop Pest Commission.

(17) The term "*registrant*" means the person registering any economic poison pursuant to the provisions of this chapter.

(18) The term "*label*" means the written, printed or graphic matter on, or attached to, the economic poison or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or devices.

(19) The term "*labeling*" means all labels and other written, printed or graphic matter:

(a) Upon the economic poison, device or any of its containers or wrappers;

(b) Accompanying the economic poison or device at any time;

(c) To which reference is made on the label or in literature accompanying the economic poison or device, except when accurate and non-misleading reference is made to current official publications of the State Experiment Station, The Clemson Agricultural College of South Carolina, the South Carolina State Crop Pest Commission or similar official agencies of this State or other states when such agencies are authorized by law to conduct research in the field of economic poisons.

(20) The term "*adulterated*" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly, or in part, abstracted.

(21) The term "*misbrand*" shall apply:

(a) To any economic poison or device if

(i) Its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(ii) It is an imitation of or is offered for sale under the name of another economic poison;

(iii) Its labeling bears any reference to registration under this chapter;

(iv) The labeling accompanying it does not contain directions for use which are necessary, and, if complied with, adequate for the protection of the public;

(v) The label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(vi) The label does not bear an ingredient statement or guaranteed analysis statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement or guaranteed analysis state-

ment on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;

- (vii) Any word, statement or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or
- (viii) In the case of insecticide, fungicide, nematocide, rodenticide or herbicide, when used as directed or in accordance with commonly recognized safe practice, it shall be injurious to living man, other vertebrate animals, vegetation, to which it is applied, or to the person applying such economic poison, excepting pests and weeds.

1954 (48) 1401.

§ 3-187.2. Medicinal or toilet preparations exempted.

This chapter shall not apply to any preparation, drug or chemical intended to be used or sold solely for medicinal use or for toilet purposes.

1954 (48) 1401.

§ 3-187.3. Commission may delegate authority to its employees.

All authority vested in the South Carolina State Crop Pest Commission by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Commission as it may designate for such purpose.

1954 (48) 1401.

§ 3-187.4. Commission may cooperate with public agencies.

In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this State due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, the Commission may cooperate with, and enter into agreements with any other agency of this State, the United States Department of Agriculture and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulation.

1954 (48) 1401.

§ 3-187.5. Designation of pests; toxicity to man and coloring of economic poisons.

The Commission may, after opportunity for a hearing,

(1) Declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) Determine whether economic poisons are to be considered as highly toxic to man; and

(3) Determine standards of coloring or discoloring for economic poisons.

1954 (48) 1401.

§ 3-187.6. Submission of complete formula.

The Commission, whenever it deems it necessary in the administration of this chapter, may require the submission of the complete formula of any economic poison.

1954 (48) 1401.

§ 3-187.7. Changes in labeling or formula not to lower efficacy of product.

Changes in labeling or formula at no time are permissible if they lower the efficacy of the product.

1954 (48) 1401.

§ 3-187.8. Rules and regulations; names in ingredient statements.

The Commission may make rules and regulations for carrying out the provisions of this chapter, including the collection and examination of samples of economic poisons and devices subject to this chapter and the determination and establishment of suitable names to be used in the ingredient statement.

1954 (48) 1401.

§ 3-187.9. Collecton and examination of samples of economic poisons and devices; sales by pest control or custom operators; reports.

The Commission may also

(1) Effect the collection and examination of samples of economic poisons and devices to determine compliance with the requirements of this chapter and

(2) At all reasonable hours enter into any car, warehouse, store, building, boat, vessel or place supposed to contain economic poisons or devices for the purpose of inspecting, sampling and procuring samples for analysis or examination from any lot, package or parcel of economic poison or any device;

(3) Make regulations governing the sale of insecticides, fungicides, nematocides, rodenticides and herbicides through the medium of "pest control operators" or "custom operators" who for a stated fee agree to apply a chemical or a mixture of chemicals for the control of specified pests;

(4) Publish from time to time, in such forms as it may deem proper, complete information concerning the sale of economic poisons, together with such data on their production and use as it may consider advisable, and reports of the results of the analyses based on official samples of economic poisons sold within this State.

1954 (48) 1401.

§ 3-187.10. Chemical analyses; collectors of samples.

The fertilizer inspection and analysis department of The Clemson Agricultural College of South Carolina shall make all chemical analyses on samples collected, using their inspectors for the collection of official samples.

1954 (48) 1401.

§ 3-187.11. Distribution, sale or transportation of certain economic poisons unlawful.

It shall be unlawful for any person to distribute, sell or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(1) Any economic poison (a) which is not registered pursuant to the provisions of §§ 3-187.41 to 3-187.54 (b) if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration or (c) if its composition differs from its composition as represented in connection with its registration.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing (a) the name and address of the manufacturer, registrant, or person for whom manufactured; (b) the name, brand, or trade mark under which said article is sold; and (c) the net weight or measure of the content subject, however, to such reasonable variations as the Commission may permit.

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in § 3-187.5, unless the label shall bear, in addition to any other matter required by this chapter; (a) the skull and crossbones; (b) the word "POISON" prominently in red on a background of distinctly contrasting color; and (c) a statement of an antidote for the economic poisoning.

(4) Any economic poison which is adulterated or misbranded, or any device which is misbranded.

1954 (48) 1401.

§ 3-187.12. Sale of economic poisons for experimental purposes.

If a written permit has been obtained from the Commission, economic poisons may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

1954 (48) 1401.

§ 3-187.13. Alteration, etc. of labels or change of substance in economic poisons unlawful.

It shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from an economic poison in a manner that may defeat the purpose of this chapter.

1954 (48) 1401.

§ 3-187.14. Revelation of information relative to formulas.

It shall be unlawful for any person to use for his own advantage or to reveal any information relative to formulas of products acquired by authority of §§ 3-187.6 and 3-187.41 to 3-187.54 other than to the Commission, its officials or employees, officials or employees of the United States Department of Agriculture or other Federal agencies, the courts in response to a subpoena, physicians and in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes in accordance with such directions as the Commission may prescribe.

1954 (48) 1401.

§ 3-187.15. Interference with the Commission.

It shall be unlawful for any person to oppose or interfere in any way with the Commission or its duly authorized agents in carrying out the duties imposed by this chapter.

1954 (48) 1401.

§ 3-187.16. Refusal of Commission access to business records unlawful.

It shall be unlawful for any manufacturer, distributor, dealer, carrier or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Commission to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this chapter.

1954 (48) 1401.

§ 3-187.17. Guarantees or undertaking required by § 3-187.77.

It shall be unlawful for any person to give a guaranty or undertaking provided for in § 3-187.77 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under said section may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking.

1954 (48) 1401.

§ 3-187.18. Invalidity.

If any provision of this chapter is declared unconstitutional or invalid, the entire chapter shall become invalid and unconstitutional.

1954 (48) 1401.

ARTICLE 2.

*Registration.***§ 3-187.41. Registration required for distribution, sale or transportation.**

Every economic poison which is distributed, sold or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered with the Commission.

1954 (48) 1401.

§ 3-187.42. Products registered under Federal Insecticide, Fungicide, and Rodenticide Act.

The Commission may register and permit the sale of any such economic poison which has been duly registered without protest under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act but products so registered shall be subject to inspection and to all provisions of this chapter.

1954 (48) 1401.

§ 3-187.43. Shipments from one plant to another operated by same person.

Notwithstanding any other provisions of this chapter, registration is not required in the case of an economic poison shipped from one plant within this State to another plant within this State operated by the same person.

1954 (48) 1401.

§ 3-187.44. When Commission shall register article.

If it appears to the Commission that the composition of the article is such as to warrant the proposed claims for it and if the article, its labeling and other material required to be submitted comply with the requirements of this chapter, he shall register the article.

1954 (48) 1401.

§ 3-187.45. Statement registrant must file.

The registrant shall file with the Commission, a statement including:

(1) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) The name of the economic poison;

(3) A complete copy of the labeling accompanying the economic poison and a statement of all claims made and to be made for it including directions for use; and

(4) If requested by the Commission a full description of the tests made and the results thereof upon which the claims are based.

1954 (48) 1401.

§ 3-187.46. Same; renewal.

In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last registered.

1954 (48) 1401.

§ 3-187.47. Registration of brands and grades; inspection fee.

The registrant, before selling or offering for sale any economic poison in this State, shall register each brand or grade of such economic poison with the South Carolina State Crop Pest Commission, Clemson, South Carolina, by filing with the Commission a copy of the label of each brand or grade of such economic poison. For the purposes of defraying expenses connected with the enforcement of this chapter, the registrant shall pay to the Commission an annual inspection fee of five dollars for each brand and grade to be offered for sale in this State. The Commission shall transmit funds so collected to the State Treasurer who shall deposit same in the general funds of the State.

1954 (48) 1401.

§ 3-187.48. No registration charge after payment of annual fees aggregating \$100.00.

Any registrant may register annually any number of brands after the payment of annual fees aggregating one hundred dollars, whereupon there shall be issued to the registrant by the Commission a certificate entitling the registrant to sell all duly registered brands in this State until the expiration of the certificate.

1954 (48) 1401.

§ 3-187.49. Registration of several products as single economic poison.

Products which have the same formula, and are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison. Additional names and labels shall be added by supplemental statements during the current period of registration.

1954 (48) 1401.

§ 3-187.50. Change in labeling or formula during registration period.

Within the discretion of the Commission, or its authorized representative, a change in the labeling or formulas of an economic poison may be made within the current period of registration without requiring a registration of the product.

1954 (48) 1401.

§ 3-187.51. Expiration of registration.

All registration of products shall expire on the thirty-first day of December, following date of issuance, unless such registration shall be renewed annually, in which event the expiration date shall be extended for each year, renewal registration or until otherwise terminated.

1954 (48) 1401.

§ 3-187.52. Renewal of certificates.

All certificates are subject to renewal upon receipt of annual inspection fees.

1954 (48) 1401.

§ 3-187.53. Refusal of registration for noncompliance with chapter; notify registrant.

If it does not appear to the Commission that the article is such as to warrant the proposed claims for it or if the article, its labeling and other material required to be submitted do not comply with the provisions of this chapter, the Commission shall notify the registrant of the manner in which the article, labeling or other material required to be submitted fail to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections.

1954 (48) 1401.

§ 3-187.54. Refusal or revocation of registration for fraud and deceit; hearing required.

The Commission may refuse to register or may cancel the registration of any brand of economic poison as herein provided upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this chapter or any rules and regulations promulgated hereunder. No registration shall be revoked or refused until the registrant shall have been given a hearing by the Commission.

1954 (48) 1401.

ARTICLE 3.

Enforcement, Penalties, etc.

§ 3-187.71. Recovery of damages against seller.

The provisions as to the penalties in this chapter are in addition to the rights of the injured party to recover in a court of competent jurisdiction any damages sustained by reason of a violation of the provisions of this chapter or the rules

and regulations of the Commission by any seller of the materials covered in this chapter, and his damages shall be determined by a jury.
1954 (48) 1401.

§ 3-187.72. Service of process generally on foreign corporation or nonresident.

For the purpose of service of process, the Commissioner of Agriculture shall be the agent of any foreign corporation or nonresident coming within the operation of this chapter.

1954 (48) 1401.

§ 3-187.73. Consent to service of process and jurisdiction by sellers.

Any person or corporation, either domestic or foreign, who shall sell the economic poisons or insecticides regulated by this chapter within this State shall sign and file with the Commissioner of Agriculture a written statement designating the Commissioner as his or its agent upon whom process may be served in the event of litigation and shall agree that the court of common pleas in any county in the State where the economic poisons or insecticides are used shall have jurisdiction to try and determine the cause of action.

1954 (48) 1401.

§ 3-187.74. Interest of enforcement official.

It shall be unlawful for any person charged with the enforcement of this chapter to be directly or indirectly connected with or financially interested in the sale, manufacture or distribution for sale of any economic poison.

1954 (48) 1401.

§ 3-187.75. Minor infractions.

Nothing in this chapter shall be construed as requiring the Commission to report for the institution of proceedings thereunder minor violations thereof whenever the Commission believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

1954 (48) 1401.

§ 3-187.76. Penalties.

Any person violating the provisions of this chapter or the rules and regulations of the Commission promulgated to carry the purposes of this chapter into effect shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars, or imprisoned for not more than thirty days, or both, at the discretion of any court having jurisdiction.

1954 (48) 1401.

§ 3-187.77. Same; exceptions as to § 3-187.11.

The penalties provided for violations of § 3-187.11 shall not apply to

(1) Any carrier while lawfully engaged in transporting an economic poison within this State, if such carrier shall, upon request, permit the Commission or its designated agent to copy all records showing the transactions in and movements of the article;

(2) Public officials of this State and the Federal Government engaged in the performance of their official duties;

(3) The manufacturer or shipper of an economic poison for experimental use only

(a) By or under the supervision of an agency of this State or of the Federal Government authorized by law to conduct research in the field of economic poisons; or

(b) By others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For Experimental Use Only—Not To Be Sold", together with the manufacturer's name and address;

(4) Any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom

he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this chapter, designating this chapter. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this chapter.

1954 (48) 1401.

§ 3-187.78. Each sale violation a separate offense.

Each sale or offer for sale in violation of the terms of this chapter or rules and regulations of the Commission shall be deemed and taken a separate and distinct offense and shall be punishable as such.

1954 (48) 1401.

§ 3-187.79. Notice to violators; hearing; prosecutions.

If it shall appear from the examination or evidence that any of the provisions of this chapter or the rules and regulations issued hereunder have been violated, the Commission may cause notice of such violations to be given to the registrant, distributor and possessor from whom said sample or evidence was taken. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Commission. If it appears after such hearing that there has been a sufficient number of violations of this chapter or the rules and regulations issued hereunder, then the Commission may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the examination of such sample duly authenticated by the analyst or other officer making the examination under the oath of such analyst or officer.

1954 (48) 1401.

§ 3-187.80. Issuance of "stop sale, use or removal" orders; appeal; release.

The Commission shall issue and enforce a written or printed "STOP SALE, USE OR REMOVAL" order to the owner or custodian of any lot of economic poison and hold at a designated place when it finds such economic poison is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and such economic poison is released in writing by the Commission or such violation has been otherwise legally disposed of by written authority. The owner or custodian of such economic poison may appeal from such order to a court of competent jurisdiction in the county or city where such economic poison is found praying for a judgment as to the justification of such order, for the discharge of such economic poison from the order and prohibiting the sale in accordance with the findings of the court. The Commission shall release the economic poison so withdrawn when the requirements of the provisions of this chapter have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. The provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter.

1954 (48) 1401.

§ 3-187.81. Commission may seize nonconforming products; disposition.

Any lot of economic poison not in compliance with the provisions of this chapter shall be subject to seizure or complaint of the Commission to a court of competent jurisdiction in the area in which such economic poison is located. In the event the court finds such economic poison to be in violation of this chapter and orders the condemnation of such economic poison, it shall be disposed of in any manner consistent with the quality of the economic poison and the laws of the State. In no instance shall the disposition of such economic poison be ordered by the court without first giving the claimant an opportunity to apply to the court for its release or

for permission to process or relabel it so as to bring it in compliance with this chapter.

1954 (48) 1401.

CHAPTER 3.

MARKETING OF AGRICULTURAL PRODUCTS.

Article 6.1.

Darlington County Farmers Marketing Commission.

Sec.

3-266.21. Farmers Marketing Commission.

Article 7.

Florence City-County Agricultural Commission.

3-267. Establishment.

Article 8.

Greenville County Marketing Commission.

Sec.

3-286.1. Construction of grain elevator or processing plant and issue of bonds therefor.

Article 8.1.

Horry County Marketing Commission.

3-299. Horry County Marketing Commission.

ARTICLE 1.

State Agricultural Marketing Commission Generally.

§ 3-208. Commission's duties and powers; rules and regulations.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Agricultural Marketing Commission, State, in volume 7.

ARTICLE 6.1.

Darlington County Farmers Marketing Commission

§ 3-266.21. Farmers Marketing Commission.

Provisions of §§ 3 to 7 and § 11 of A. & J. R. 1953 (48) 132 make up this section.

ARTICLE 7.

Florence City-County Agricultural Commission.

§ 3-267. Establishment.

There is hereby established a Commission to be known as the "Florence City-County Agricultural Commission." It shall be composed of six members, who shall be selected as follows: one by the county legislative delegation, one by the city council of the city of *Florence*, one by the Florence Chamber of Commerce, one by the district agent of Clemson College Extension Service, one by the district supervisor of agricultural education and the other, the sixth member, by the five members selected as provided above. With the exception of the initial terms the terms of office shall be for a period of three years from July 1 1950; but the terms of the initial members shall be from the dates of their respective appointments and for a regular term from July 1 1950. Their successors shall be selected as provided for the original appointments and any vacancy occurring from any cause shall be filled in the manner provided above for filling the office in which the vacancy has occurred. All members shall serve until their successors shall have been appointed and qualified. They shall serve without compensation.

1950 (46) 1874; 1952 (47) 1718.

Effect of amendment.—The amendment increased the number of members from five to six, the member added being the one appointed by the district supervisor of agricultural education.

ARTICLE 8.

*Greenville County Marketing Commission.***§ 3-286.1. Construction of grain elevator or processing plant and issue of bonds therefor.**

Provisions from A. & J. R. 1952 (47) 2164 make up this section.

ARTICLE 8.1.

*Horry County Marketing Commission.***§ 3-299. Horry County Marketing Commission.**

Provisions of A. & J. R. 1952 (47) 2154 as amended by 1954 (48) 1525, 1537 make up this section.

CHAPTER 5.

Fertilizers.

Sec.
3-501 to 3-544. [Repealed.]

Sec.
3-547 to 3-586. [Repealed.]

§§ 3-501 to 3-544 "commercial fertilizers" defined; filler.

Repealed by A. & J. R. 1954 (48) 1509.

Cross reference.—See now §§ 3-590 et seq.

§§ 3-547 to 3-586. Water; penalty for certain violation of chapter.

Repealed by A. & J. R. 1954 (48) 1509.

Cross reference.—See now §§ 3-590 et seq.

CHAPTER 5.1.

SOUTH CAROLINA FERTILIZER LAW OF 1954.

Article 1.
General Provisions.

- Sec.
3-590. Citation of Chapter.
3-590.1. Definitions.
3-590.2. Fertilizer Board of Control.
3-590.3. Rules and regulations.
3-590.4. Exchange between registrants.
3-590.5. When commercial fertilizer misbranded.
3-590.6. Distribution of misbranded commercial fertilizer unlawful.
3-590.7. Misdemeanor to violate.
3-590.8. Invalidity.

Article 2.**Registration of Fertilizer, etc.**

- 3-590.21. Registration and guarantee of grades required prior to sale; expiration date.
3-590.22. Submission of application; fee.
3-590.23. Information application contain.
3-590.24. Same; phosphoric acid in certain cases.
3-590.25. When registration and sale may be prohibited.
3-590.26. Exclusive use of brand name or trade-mark.
3-590.27. Revocation or refusal of registration for fraud.

Article 3.**Labels, Tags, etc.**

- 3-590.31. Information required on containers.

Sec.

- 3-590.32. Printing on package.
3-590.33. Statement accompany bulk shipment.
3-590.34. Contract specifications to be complied with; actual analysis shown on bag and guaranteed.

Article 4.**Required Standards.**

- 3-590.51. Minimum plant nutrient content.
3-590.52. Nitrate of soda, Sulphate of Ammonia and Superphosphate.
3-590.53. Specialty fertilizer.
3-590.54. Filler.
3-590.55. Wet or bad mechanical condition.
3-590.56. Bulk sales.

Article 5.**Analyses and Inspections.**

- 3-590.71. Analyses of fertilizer; inspectors; chemists; reports.
3-590.72. Entry of premises and inspection; sampling.
3-590.73. Analysis of fertilizer for purchases own use.

Article 6.**Inspection Tax.**

- 3-590.81. Tax per ton of commercial fertilizer sold.
3-590.82. Tax on packages containing ten pounds or less.
3-590.83. Exemptions.
3-590.84. Reports on sales; payment of tax.

Sec.

- 3-590.85. Reports on shipments to non-registrants.
 3-590.86. Information confidential.
 3-590.87. Bond and records of registrant.
 3-590.88. Examination of registrant's records.

Article 7.**Fines, Suits, etc.**

- 3-590.101. Penalties for plant nutrient deficiencies.
 3-590.102. Penalty for excessive chlorine in tobacco fertilizer.
 3-590.103. Penalty for deficiency in basicity.
 3-590.104. Additional plant nutrients.
 3-590.105. Short weight.
 3-590.106. Commercial values; use in assessment of penalties.
 3-590.107. Penalties for benefit of ultimate consumer.

Sec.

- 3-590.108. Distribution of fine or penalty.
 3-590.109. Failure of dealer to distribute collected penalty.
 3-590.110. Evidence of distribution.
 3-590.111. Penalty to transport, sell or receive improperly branded or misbranded fertilizer.
 3-590.112. Actions to recover fines and penalties.
 3-590.113. Service of process on nonresident manufacturers.
 3-590.114. Analyze fertilizer ordered sold prior to sale.
 3-590.115. Remittance of penalties by the board.
 3-590.116. Stop sale, use or removal orders; release of fertilizer.

ARTICLE 1.*General Provisions.***§ 3-590. Citation of chapter.**

This chapter shall be known as the South Carolina Fertilizer Law of 1954.
 1954 (48) 1509.

§ 3-590.1. Definitions.

When used in this chapter:

(1) The term "*board*" means the board of trustees of The Clemson Agricultural College of South Carolina.

(2) The term "*fertilizer material*" means any substance containing nitrogen, phosphoric acid, potash or any other recognized plant nutrient element or compound which is used primarily for its plant nutrient content, value in promoting plant growth or for compounding mixed fertilizers. Lime, limestone, marl, underground bones, stockpen manure, barnyard manure or the excrement of any domestic animal shall not be considered as a fertilizer material, in case that such manure or excrement has not been dried, manipulated or otherwise treated or is not claimed to have a value of more than eight dollars a ton.

(3) The term "*unmanipulated manure*" means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.

(4) The term "*manipulated manures*" means substances composed primarily of excreta, plant remains or mixtures of such substances which have been processed in any manner, including the addition of plant foods, drying, grinding and other means.

(5) The term "*mixed fertilizer*" means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

(6) The term "*commercial fertilizer*" includes mixed fertilizer or fertilizer materials.

(7) The term "*specialty fertilizer*" means any commercial fertilizer distributed primarily for use on crops grown for noncommercial purposes, such as home gardens and lawns.

(8) The term "*bulk fertilizer*" means commercial fertilizer delivered to the purchaser in the solid or liquid state, in a non-packaged form to which a label cannot be attached.

(9) The term "*brand*" means a term, design or trade-mark used in connection with one or several grades of commercial fertilizer.

(10) The term "*grade*" means the minimum percentage of total nitrogen, available phosphoric acid and soluble potash as stated in the order given in this definition, and when applied to mixed fertilizers shall be in whole numbers only.

(11) The term "*official sample*" means any sample of commercial fertilizer taken by the board or its authorized representative in accordance with the procedures prescribed by the board.

(12) The term "*farmer's sample*" means a sample of commercial fertilizer drawn in accordance with the provisions of § 3-590.73.

(13) The term "*official analysis*" means the analysis of commercial fertilizer made by the board or its duly authorized representative in accordance with the methods prescribed by the board.

(14) The term "*ton*" means a net weight of two thousand pounds avoirdupois.

(15) The term "*unit*" of plant nutrient means twenty pounds or one per cent of a ton.

(16) The term "*percent*" or "*percentage*" means the percentage by weight.

(17) The term "*registrant*", "*guarantor*" or "*manufacturer*" means the person registering pursuant to the provisions of this chapter.

(18) The term "*label*" means the written, printed or graphic matter on or attached to the immediate container, or, in the case of bulk goods, accompanying transportation of the lot of the commercial fertilizer.

(19) The term "*soil amendment*" shall include any and every substance or mixture of substances except those included under paragraphs (2) to (9) of this section imported, manufactured, prepared or sold for fertilizer, manurial, soil-enriching or soil-corrective purposes or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops, or producing any chemical or physical change in the soil.

1954 (48) 1509.

§ 3-590.2. Fertilizer Board of Control.

The board may delegate the duties herein provided to the fertilizer committee of the board which shall be known as the Fertilizer Board of Control.

1954 (48) 1509.

§ 3-590.3. Rules and regulations.

The board may establish such rules and regulations in regard to the inspection, analysis, distribution and sale of commercial fertilizer, agricultural lime, and soil amendments as shall not be inconsistent with the provisions of this chapter and as in its judgment will best carry out the requirements thereof.

1954 (48) 1509.

§ 3-590.4. Exchanges between registrants.

Nothing in this chapter shall be construed to restrict or avoid sales or exchange of commercial fertilizers to each other by importers, registrants or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizers to registrants or manipulators who have registered their brands as required by the provisions of this chapter.

1954 (48) 1509.

§ 3-590.5. When commercial fertilizer misbranded.

A commercial fertilizer is *misbranded* if it carries any false or misleading statement upon or attached to the container, or, if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the commercial fertilizer.

1954 (48) 1509.

§ 3-590.6. Distribution of misbranded commercial fertilizer unlawful.

It shall be unlawful to distribute a misbranded commercial fertilizer.

1954 (48) 1509.

§ 3-590.7. Misdemeanor to violate.

Any person violating the fertilizer law of this State shall be guilty of a misdemeanor.

1954 (48) 1509.

§ 3-590.8. Invalidity.

If any clause, sentence, paragraph or part of this chapter shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

1954 (48) 1509.

ARTICLE 2.*Registration of Fertilizers, etc.***§ 3-590.21. Registration and guarantee of grades required prior to sale; expiration date.**

Each registrant, before selling or offering for sale in this State, shall register and guarantee each grade of commercial fertilizer with the board. All registrations expire on July first of each year.

1954 (48) 1509.

§ 3-590.22. Submission of application; fee.

The application for registration shall be submitted in duplicate on forms furnished by the board accompanied by a registration fee of one dollar per brand or grade. Upon approval by the board or its duly authorized representative, one copy shall be returned to the applicant.

1954 (48) 1509.

§ 3-590.23. Information application contain.

The application for registration, in addition to the firm name and address and plant locations shall include information with respect to each brand, grade, or analysis in the following order:

(1) Net weight

(2) Brand name and grade

(3) Guaranteed analysis

(a) In mixed fertilizers (other than those branded for tobacco):

i. Total nitrogen ____ percent;

ii. (Optional) Water-insoluble nitrogen ____ percent;

iii. Percent of total in multiples of five;

iv. Available phosphoric acid ____ percent;

v. Soluble potash ____ percent;

vi. (Optional) Magnesium or total magnesium oxide ____ percent; and

vii. Whether the fertilizer is acid forming or non-acid forming: The potential acidity or basicity, if claimed, shall be expressed as equivalent of calcium carbonate in multiples of five percent or one hundred pounds per ton only.

(b) In mixed fertilizers branded for tobacco:

i. Total nitrogen ____ percent;

ii. Water-insoluble nitrogen ____ percent;

iii. Percent of total in multiples of five;

iv. (Optional) Nitrogen, as nitrate, ____ percent;

v. Percent of total in multiples of five;

vi. Available phosphoric acid ____ percent;

vii. Soluble potash ____ percent;

viii. Maximum chlorine content ____ percent;

ix. Total magnesium or total magnesium oxide ____ percent;

x. Whether the fertilizer is acid-forming or non-acid forming: The potential acidity or basicity, if claimed, shall be expressed as equivalent of calcium carbonate in multiples of five percent, or one hundred pounds per ton only.

(c) In fertilizer materials, including manipulated manures, if claimed,

- i. Total nitrogen --- percent;
- ii. Available phosphoric acid --- percent;
- iii. Soluble potash --- percent;
- iv. Other recognized plant nutrients --- percent.

(4) The name and address of the registrant.

(5) Additional plant nutrient elements determinable by chemical control methods that in the opinion of the board are beneficial to crops may also be included in the guarantee. All such additional guarantees, except boron, shall be on the basis of the chemical element or as otherwise provided. Boron, if claimed, shall be guaranteed in terms of boron or equivalent in borax ($\text{Na}_2\text{B}_4\text{O}_7 \cdot 10 \text{H}_2\text{O}$) and stated as pounds per one hundred pounds of fertilizer. The boron or borax guarantee will be considered both a minimum and a maximum guarantee. When any such additional plant nutrients or elements are included in the guarantee they shall be subject to inspection and analysis in accordance with the methods and regulations prescribed by the board.

(6) The sources from which such nitrogen, phosphoric acid, and potash and other plant nutrients are derived.

1954 (48) 1509.

§ 3-590.24. Same; phosphoric acid in certain cases.

In the case of bone, tankage and other organic materials in which the phosphoric acid is not shown by laboratory methods to be available but eventually becomes available in the soil, phosphoric acid may be guaranteed as total phosphoric acid. The natural unacidulated mineral phosphatic materials offered for sale shall be guaranteed as to both total and available phosphoric acid. The available phosphoric acid guarantee shall not be given less prominence on the bag or tag than the total phosphoric acid. In the case of basic slag either the total or available phosphoric acid shall be guaranteed.

In no case, except in the case of unacidulated mineral phosphates, shall the term "total phosphoric acid" and "available phosphoric acid" be used in the same statement of analysis.

1954 (48) 1509.

§ 3-590.25. When registration and sale may be prohibited.

The board may prohibit the registration and sale of any fertilizer which

(1) Has a misleading or deceptive trade-mark, commercial brand name or firm name,

(2) Carries exaggerated claims or

(3) Contains materials other than recognized plant nutrients which are injurious to growing plants.

1954 (48) 1509.

§ 3-590.26. Exclusive use of brand name or trade-mark.

The brand name or trademark registered by a person shall not be entitled to registration by another. The person having first registered and used such name or trade-mark shall be entitled to it, even should it not be offered for current registration.

1954 (48) 1509.

§ 3-590.27. Revocation or refusal of registration for fraud.

When it shall appear to the board that any registrant has been persistently fraudulent in his dealings the board may revoke or refuse to register such registrant.

1954 (48) 1509.

ARTICLE 3.

*Labels, Tags, etc.***§ 3-590.31. Information required on containers.**

Any commercial fertilizer offered for sale or sold or distributed in this State in bags, barrels or other containers shall have placed on or affixed to the container in written or printed form the net weight and the information required by items 1 to 5 of § 3-590.23 either:

(1) On tags affixed to the end of the package between the ears or on the sewed end.

(2) Directly on the package in type that is plainly legible or

(3) A combination of the two.

1954 (48) 1509.

§ 3-590.32. Printing on package.

No printing shall appear on the package without the brand name and grade.

1954 (48) 1509.

§ 3-590.33. Statement accompany bulk shipment.

If distributed in bulk, a written or printed statement of the weight and the information required by items 1 to 5 of § 3-590.23 shall accompany delivery and be supplied to the purchaser.

1954 (48) 1509.

§ 3-590.34. Contract specifications to be complied with; actual analysis shown on bag and guaranteed.

When there is a contract of agreement between a registrant and a purchaser of commercial fertilizer that the fertilizer will be manufactured by the use of certain definite sources and amounts of nitrogen, phosphoric acid and potash, the fertilizer must be manufactured from these materials without the substitution of other materials and the actual analysis, including the amount (lbs. per one hundred) and analysis of each material in the mixture, must be shown on the tag and guaranteed as prescribed in § 3-590.21. Failure on the part of the registrant to comply with this requirement shall render the registrant liable to the purchaser for penalties prescribed by law and, in addition thereto, the registrant shall pay to the purchaser a penalty equal to one-fourth of the purchase price of such fertilizer. Such mixtures must conform to the approved ratios and minimum analysis grade for each ratio.

1954 (48) 1509.

ARTICLE 4.

*Required Standards.***§ 3-590.51. Minimum plant nutrient content.**

A maximum of twenty grade ratios, with a minimum analysis grade for each ratio for mixed fertilizer containing two or more plant nutrients approved by the board annually, can be registered for sale in this State. Such mixture must contain a minimum of twenty per cent of total nitrogen, available phosphoric acid or soluble potash; *provided* that mixed fertilizers with twenty-five per cent or more of the nitrogen in the insoluble form shall contain a minimum of eighteen per cent of total nitrogen, available phosphoric acid or soluble potash. This shall not apply to animal or vegetable product not mixed with other fertilizer materials.

1954 (48) 1509.

§ 3-590.52. Nitrate of soda, sulphate of ammonia and superphosphate.

No nitrate of soda containing less than fifteen and one-fourth percent of nitrogen, no sulfate of ammonia containing less than twenty and one-fourth percent of nitrogen and no superphosphate containing less than eighteen percent of avail-

able phosphoric acid shall be registered, sold or offered for sale for fertilizer purposes within this State.

1954 (48) 1509.

§ 3-590.53. Specialty fertilizer.

A registrant may be permitted to sell one, but not exceeding one, grade of specialty fertilizer not on the current approved ratio list if such fertilizer contains a minimum of twenty percent of total nitrogen, available phosphoric acid or soluble potash. The board or its duly authorized representatives may at their discretion require a sample label, all labeling claims made or to be made, and a sample of the product to be submitted before approving the registration of such fertilizer.

1954 (48) 1509.

§ 3-590.54. Filler.

It shall be unlawful for any person to manufacture, offer for sale or sell in this State any commercial fertilizer containing any substance used as a filler that is injurious to crop growth or deleterious to the soil or to use in such commercial fertilizer as a filler any substance that contains inert plant nutrient material or any other substance for the purpose or with the effect of deceiving or defrauding the purchaser. The board shall determine what inert material or substance is injurious or objectionable.

1954 (48) 1509.

§ 3-590.55. Wet or bad mechanical condition.

No commercial fertilizer shall be offered for sale which contains such an amount of water as to render the handling or manipulation of such commercial fertilizer difficult or to cause the clogging of fertilizer distributors by reason of its bad mechanical condition. Such wet or bad mechanical condition of any commercial fertilizer shall be carefully observed by all fertilizer inspectors at the time of drawing their samples and shall be reported to the board or its duly authorized representative who, if he confirms the opinion of the inspector, shall forbid the sale of the lot so inspected.

1954 (48) 1509.

§ 3-590.56. Bulk sales.

Registrants may sell commercial fertilizer in bulk to persons if delivery is made directly from the registrant to the user without intermediate storage.

1954 (48) 1509.

ARTICLE 5.

Analyses and Inspections.

§ 3-590.71. Analyses of fertilizers; inspectors; chemists; reports.

The board shall cause one or more analyses to be made annually of such commercial fertilizers sold or offered for sale under the provisions of this chapter, as may be sampled under its direction and in accordance with such regulations as it may adopt. For this purpose, the board or a committee thereof shall appoint or cause to be appointed a sufficient number of administrative personnel, inspectors and chemists who shall procure, analyze and otherwise experiment with samples of commercial fertilizers in accordance with the methods prescribed by the board or its duly authorized agent and who shall perform such other duties as the board may direct. The analyses of all officially drawn samples will be compiled annually and published as directed by the board.

1954 (48) 1509.

§ 3-590.72. Entry of premises and inspection; sampling.

In order to carry out the provisions of this chapter, any officer or agent of the board or of a committee thereof authorized by the board for the purpose may at any hour during the day or night enter any factory, plant, car or other place in which any commercial fertilizer or substances designed or intended for use as a fer-

tizer is stored, shipped, sold, or used, and may inspect and sample the contents and operation thereof. It is hereby made a condition to the shipment or delivery for shipment of any fertilizer from any such factory, plant, car or truck that such inspection and sampling be permitted by the owner or operator thereof.

1954 (48) 1509.

§ 3-590.73. Analysis of fertilizers for purchasers own use.

Any citizen of this State who shall purchase for his own use and not for sale any commercial fertilizers shall have the right to have the same analyzed by the board by taking a sample of the same for analysis from not less than five unopened bags and from at least ten percent of such fertilizer within fifteen days from the date of delivery. Before taking such sample such citizen shall give the registrant whose name and address appear on the bag or tag at least six days' written notice, which shall be served personally or sent by registered mail, of his intention to draw such sample. If the registrant shall neglect to have a representative present within the time required, then such sample may be drawn in the presence of at least two disinterested witnesses; one to be chosen by such purchaser and one by the seller, who shall certify that the sample was taken from such commercial fertilizer. The certificate with the sample shall be sealed by a third disinterested party in the presence of the witnesses and directed to the College. If any seller, vendor or registrant of commercial fertilizer shall refuse, decline, or neglect to choose a witness as provided in this section, after having been notified or requested six days before by such purchaser to do so, then he shall forfeit his right so to do and such purchaser shall select two disinterested witnesses, who shall select a third witness, who shall proceed to take samples as provided. All samples of commercial fertilizer drawn under the provisions of this section shall be subject to such other rules as may be prescribed by the board not inconsistent with the provisions of this chapter.

1954 (48) 1509.

ARTICLE 6.

Inspection Tax

§ 3-590.81. Tax per ton of commercial fertilizer sold.

For the purpose of carrying out the provisions of this chapter all registrants or guarantors who distribute or sell any commercial fertilizer in this State shall pay to the State Treasurer an inspection tax of twenty-five cents for each ton of commercial fertilizer sold.

1954 (48) 1509.

§ 3-590.82. Tax on packages containing ten pounds or less.

On individual packages of commercial fertilizer containing ten pounds or less, there shall be paid in lieu of the annual registration fee of one dollar per brand and the twenty-five cents per ton inspection tax, an annual registration fee and inspection tax of ten dollars for each brand and grade sold or distributed. When a person sells commercial fertilizer in packages of ten pounds or less and in packages over ten pounds, this annual registration and inspection tax of ten dollars shall apply only to that portion sold in packages of ten pounds or less, and that portion sold in packages over ten pounds shall be subject to the same inspection tax of twenty-five cents per ton as provided in this § 3-290.81.

1954 (48) 1509.

Cross reference.—See § 3-590.22 for registration fee.

§ 3-590.83. Exemptions.

Nothing in this article shall interfere with fertilizer passing through this State in transit shall it apply to the delivery of commercial fertilizer moving between registrants.

1954 (48) 1509.

§ 3-590.84. Reports on sales; payment of tax.

A report of tonnage shall be due and the inspection tax payable monthly on the fifteenth day of the following month covering tonnage of commercial fertilizer sold during the preceding month by the registrant or guarantor transacting, distributing or selling to a nonregistrant. If the tonnage report is not filed and the payment of inspection taxes is not made within fifteen days after the date due, a collection fee amounting to ten percent of the amount due shall be assessed against the guarantor, and the amount of fees due shall constitute a debt and become the basis of a judgment against the guarantor. If the tonnage report is not filed and the inspection tax and collection fee is not made within thirty days after the date due, or if the report be false, fifteen days after due written notice and opportunity for hearing have been given, the board may cancel the registration of commercial fertilizer registered by the delinquent guarantor.

1954 (48) 1509.

§ 3-590.85. Reports on shipments to nonregistrants.

The registrant or guarantor transacting, distributing or selling commercial fertilizer to a nonregistrant shall mail to the board or its duly authorized representative within forty-eight hours, less legal holidays and Sundays, after shipment is made a report showing the following information: Name, county of consignee, amount, tons, by grade and analysis of commercial fertilizer. This report may be made on a special summary form provided by the board or by submitting a copy of the invoice.

1954 (48) 1509.

§ 3-590.86. Information confidential.

Any information as to the amount of commercial fertilizer sold and business practices of any guarantor obtained from tonnage reports or from inspection of records and books shall remain confidential and shall not be revealed by the board or its representatives to the public, persons or other guarantors.

1954 (48) 1509.

§ 3-590.87. Bond and records of registrant.

In order to guarantee faithful performance, each registrant must be able to furnish a satisfactory financial statement or surety bond to the board or its authorized representative. The registrant must also satisfy the board or its duly authorized representative that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of commercial fertilizer sold.

1954 (48) 1509.

§ 3-590.88. Examination of registrant's records.

The board or its authorized representative may examine the registrant's records and verify the tonnages of commercial fertilizer manufactured, stored, handled or sold.

1954 (48) 1509.

ARTICLE 7.*Fines, Suits, etc.***§ 3-590.101. Penalties for plant nutrient deficiencies.**

If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any one ingredient, a penalty shall be assessed in accordance with the following provisions:

(1) Nitrogen

(a) *Total nitrogen*: A penalty of three times the commercial value of the deficiency if such deficiency is in excess of thirty one-hundredths of one percent on goods that are guaranteed three percent or less; thirty-five one-hundredths of one percent on goods that are guaranteed four percent; forty one-hundredths of one percent on goods that are guaranteed over four percent, up to and including eight

percent, fifty one-hundredths of one percent on goods guaranteed over eight percent up to and including thirty percent and seventy-five one-hundredths of one percent on goods guaranteed over thirty percent.

(b) *Water-insoluble nitrogen*: A penalty of three times the commercial value of the deficiency if such deficiency is in excess of ten one-hundredths of one percent on goods guaranteed up to and including fifty one-hundredths of one percent; twenty one-hundredths of one percent on goods guaranteed from fifty one-hundredths of one percent to one percent; thirty one-hundredths of one percent on goods guaranteed from one percent to two percent; fifty one-hundredths of one percent on goods guaranteed above two percent and up to and including five percent and one percent on goods guaranteed over five percent.

(2) Available phosphoric acid. A penalty of four times the commercial value of the deficiency, if such deficiency is in excess of forty one-hundredths of one percent on goods that are guaranteed up to and including ten percent; fifty one-hundredths of one percent on goods that are guaranteed over ten percent up to and including twenty-five percent and seventy-five one-hundredths of one percent for goods guaranteed over twenty-five percent.

(3) Soluble potash. A penalty of four times the commercial value of the deficiency, if such deficiency is in excess of thirty one-hundredths of one percent on goods that are guaranteed three percent; forty one-hundredths of one percent on goods guaranteed four percent; fifty one-hundredths of one percent on goods guaranteed over four percent up to and including eight percent; sixty one-hundredths of one percent on goods guaranteed over eight percent, up to and including twenty percent and seventy-five one-hundredths of one percent on goods guaranteed over twenty percent.

1954 (48) 1509.

§ 3-590.102. Penalty for excessive chlorine in tobacco fertilizer.

If the chlorine content of any lot branded for tobacco shall exceed the maximum amount guaranteed by more than one-half of one percent, the registrant shall be liable for a penalty of ten percent of the value of the fertilizer for each additional one-half of one percent of excess or fraction thereof. All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed.

1954 (48) 1509.

§ 3-590.103. Penalty for deficiency in basicity.

Should the basicity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five percent, or one hundred pounds of calcium carbonate equivalent per ton, from the guarantee, a penalty of fifty cents per ton for each fifty pounds of calcium carbonate or fraction thereof, in excess of the one hundred pounds allowed, shall be assessed and paid as outlined in §§ 3-590.101 to 3-590.110.

1954 (48) 1509.

§ 3-590.104. Additional plant nutrients.

Tolerances and penalties for any additional plant nutrients or elements or compounds not included in §§ 3-590.101 to 3-590.103 shall be prescribed by the board. But in no case shall the penalties exceed the selling price of the fertilizer.

1954 (48) 1509.

§ 3-590.105. Short weight.

If any commercial fertilizer in the possession of the consumer is found by the board to be short in weight, the registrant of such commercial fertilizer shall within thirty days after official notice from the board or its duly authorized representative pay to the consumer a penalty equal to four times the value of the actual short-

age. Underweight commercial fertilizer stored or offered for sale, other than in the possession of the consumer, shall be deemed misbranded.

1954 (48) 1509.

Cross reference.—See § 3-590.5 for definition of misbranded commercial fertilizer.

§ 3-590.106. Commercial values; use in assessment of penalties.

For the purposes of determining the commercial values to be applied under the provisions of this chapter, the board shall determine and publish annually the relative commercial values per unit of nitrogen, phosphoric acid and potash in commercial fertilizers in this State. The values so determined and published shall be used in assessing penalties.

1954 (48) 1509.

§ 3-590.107. Penalties for benefit of ultimate consumer.

All penalties imposed under §§ 3-590.101 to 3-590.104 for deficiencies is guaranteed analysis of any commercial fertilizer shall be entirely for the benefit of the ultimate consumer of such commercial fertilizer and no such penalty or part thereof, except as authorized in § 3-590.108, shall accrue to any dealer in commercial fertilizer.

1954 (48) 1509.

§ 3-590.108. Distribution of fine or penalty.

Upon the assessment of a fine or penalty by the board, a committee thereof, or by judgment in any action at law as herein provided, the net total of such fine or judgment shall be paid over to the dealer who sold or offered for sale such deficient commercial fertilizer. Such dealer shall within thirty days thereafter distribute pro rata ninety per cent of such penalty, fine or judgment to the consumer to whom such goods as shall have been found deficient were sold. The dealer may retain ten per cent of such penalty, fine or judgment for his services. But nothing herein contained shall relieve any registrant, manipulator, or mixer who shall have sold his goods direct to the consumer from paying over to such consumer the full amount of any fine, penalty or judgment which may have been imposed or found on account of any deficiency in guaranteed analysis, and when after due search and diligence, not over thirty days after the analysis is reported, it is found to be impossible for the dealer to furnish the names, addresses and amounts purchased by each of the consumers of any deficient goods, thereby making it impossible to refund the amount due to such consumers, the dealer shall pay the total refund to the State Treasurer by sending it to the board or its duly authorized representative, Clemson, South Carolina, the proceeds to be credited to the account of the Clemson College fertilizer fund.

1954 (48) 1509.

§ 3-590.109. Failure of dealer to distribute collected penalty.

Any dealer who receives such fines, penalties or judgment and who shall refuse or neglect to accept and distribute such penalties or judgment shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars or imprisoned not exceeding thirty days, or both, in the discretion of any court of competent jurisdiction.

1954 (48) 1509.

§ 3-590.110. Evidence of distribution.

As evidence of the distribution of such penalty, fine or judgment to the ultimate consumer such dealer shall furnish receipt or other evidence of such distribution to the board or its duly authorized representative.

1954 (48) 1509.

§ 3-590.111. Penalty to transport, sell or receive improperly branded or misbranded fertilizers.

Every person who shall sell, offer for sale or transport in this State any commercial fertilizer without being properly branded or having attached thereto such labels and tags as required by law or any misbranded fertilizer, or receive any such fertilizer may be required to forfeit to the State a sum not to exceed the selling price of each separate package sold, offered for sale or received, to be recovered by suit brought in the name of the State in any court of competent jurisdiction. Such forfeitures, when collected, shall be paid to the State Treasurer, who shall hold the same subject to the order of the board.

1954 (48) 1509.

Cross reference.—See § 3-590.5 for definition of “misbranded commercial fertilizer”.

§ 3-590.112. Actions to recover fines and penalties.

The State may maintain an action in any court of competent jurisdiction against the vendor or owner of any commercial fertilizer sold, offered or exposed for sale in this State or shipped or transported within or into the State in violation of law to recover the fines and penalties due for the illegal sale, shipment or transportation thereof regardless of the domicile or place of residence of such owner or vendor and shall have a lien upon such commercial fertilizer, as well as upon any other commercial fertilizers, to be found within the State belonging to the offending party or parties, to secure the payment of such fines or penalties and costs and expense of such action. Such lien shall be enforced at attachment of such commercial fertilizer under a writ of attachment to be issued in accordance with the practice prescribed in §§ 10-901 to 10-956, except that no security as required of other plaintiffs by § 10-908 need be given by the State in such action.

1954 (48) 1509.

§ 3-590.113. Service of process of nonresident manufacturers.

Any seller of commercial fertilizers manufactured outside this State shall be taken and deemed to be an agent of the manufacturer of such fertilizers for the purpose of the service of process and of such papers as may be necessary in the commencement of any action or suit in any court of competent jurisdiction authorized by this chapter.

1954 (48) 1509.

§ 3-590.114. Analyze fertilizers ordered sold prior to sale.

If there be judgment in favor of the State, as plaintiff, in such action and the commercial fertilizers shall be ordered sold under execution to satisfy such judgment, an inspector shall, under direction of the board, prior to the sale, draw proper samples from such commercial fertilizer, and cause the same to be analyzed by the College, and shall affix to the package thereof a statement of the result of such analysis on each package as required by this chapter, so that the purchaser at the sheriff's or constable's sale may purchase such commercial fertilizer under a full guaranteed analysis as provided by law.

1954 (48) 1509.

§ 3-590.115. Remittance of penalties by the board.

The board may remit, in whole or in part, upon payment of the expenses incident to an investigation, any penalty herein provided for except the penalties provided for the deficiency in analysis, when the offending person is able to show that his violation of this chapter was beyond his reasonable ability to prevent such remission of penalty by the board shall be on such condition as to it may seem equitable and fair.

1954 (48) 1509.

§ 3-590.116. Stop sale, use or removal orders; release of fertilizers.

The board or its authorized representative may issue and enforce a written or printed "Stop Sale, Use or Removal Order" to the owner or custodian of any lot of commercial fertilizer and hold at a designated place when the board or its authorized representative finds such commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and such commercial fertilizer is released in writing by the board or its duly authorized representative, or such violation has been otherwise legally disposed of by written authority. The board or its duly authorized representative shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this chapter have been complied with and all costs, expenses, and penalties incurred in connection therewith have been guaranteed or paid by the registrant.

1954 (48) 1509.

CHAPTER 6.

COMMERCIAL FEEDING STUFFS.

Article 1.

General Provisions.

Sec.

3-603. Certain sales and distributions unlawful.

3-604. [Repealed.]

Article 3.

Labeling.

Sec.

3-621. Labeling of concentrated commercial feeds.

ARTICLE 1.

*General Provisions.***§ 3-603. Certain sales and distributions unlawful.**

It shall be unlawful for any manufacturer, importer, jobber, agent or dealer to:

(1) Sell or offer or expose for sale or distribution in this State any concentrated commercial feeding stuff without complying with the requirements of articles 1 to 6 of this chapter or

(2) Sell or offer or expose for sale or distribution any concentrated commercial feeding stuff which contains substantially a smaller percentage of crude protein, crude fat or carbohydrates or a larger percentage of crude fiber than certified to be contained.

1942 Code § 6597-1; 1932 Code 1368; Cr. C. '22 § 268; Cr. C. '12 § 481; 1906 (25) 101; 1910 (26) 613; 1920 (31) 853; 1923 (33) 93; 1954 (48) 1471.

Effect of amendment.—The amendment eliminated items (3) and (4).

§ 3-604. Unlawful to sell any compound of crushed ear corn.

Repealed by A. & J. R. 1954 (48) 1471.

§ 3-608. Regulations of commissioner.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Agriculture Commissioner, in volume 7.

ARTICLE 3.

*Labeling.***§ 3-621. Labeling of concentrated commercial feeds.**

(5) A statement of the maximum percentage it contains of crude fiber, the percentage of crude fat and the percentage of crude protein.

1942 Code § 6587; 1932 Code § 6587; Civ. C. '22 § 3497; Civ. C. '12 § 2420; 1910 (26) 613; 1936 (39) 1592; 1954 (48) 1696.

Effect of amendment.—The amendment required percentage of crude fat and percentage of crude protein to be in statement. The section otherwise not amended and remains unchanged.

Title 4.

Alcohol and Alcoholic Beverages.

Chap. 2. Beer, Ale, Porter and Wine, §§ 4-212 to 4-212.2.

CHAPTER 1.

THE ALCOHOLIC BEVERAGE CONTROL, ACT.

ARTICLE 3.

Issue of Licenses; Bond or Deposit and Action Thereon.

§ 4-31. What licenses Commission may issue.

Stated in *Asmer v. Livingston*, ... S. C., 82 S. E. (2d) 465 (1954).

§ 4-43. Bond or deposit of licensee.

"Lawful operation of the business" is a condition of the bond required of a liquor dealer by this section, but it will hardly be contended that the bond is liable for dam-

ages for the tort of a liquor dealer which he may commit against an individual. *Rogers v. U. S. Fidelity & Guaranty Co.*, ... S. C., 81 S. E. (2d) 896 (1954).

ARTICLE 5.

Regulation of Licensees.

§ 4-72. Maximum sale prices for wholesalers and retailers.

Retailer not compelled to charge maximum price.—There is nothing in this section which compels a retail liquor store

dealer to charge and collect a profit of 25%. *Jenkins v. Livingston*, 219 S. C. 260, 64 S. E. (2d) 883 (1951).

ARTICLE 6.

Offenses and Enforcement.

§ 4-91. Unlawful manufacture, sale or transportation, etc.

Applied in *State v. Gordon*, 224 S. C. 433, 79 S. E. (2d) 869 (1954).

§ 4-93. Assisting in unlawful transportation.

Applied in *State v. Edwards*, 220 S. C. 373, 68 S. E. (2d) 346 (1951).

§ 4-94. Unlawful purchase.

Cited in *State v. McCrae*, 222 S. C. 194, 72 S. E. (2d) 451 (1952).

§ 4-95. Unlawful possession.

Jurisdiction to try first offense of unlawful possession.—See note to § 43-68.

This section does not repeal by implication § 4-401, declaring the unlawful

keeping in possession of alcoholic liquor a common nuisance. *State v. McCrae*, 222 S. C. 194, 72 S. E. (2d) 451 (1952).

§ 4-107. Penalties for violations.

Cross reference.—As to jurisdiction to try first offense of unlawful possession of intoxicating liquor, see note to § 43-68.

Sentence not excessive.—A sentence of eighteen months in prison upon a conviction of unlawful possession of liquors

in defendant's place of business was not excessive. *State v. Goodall*, 221 S. C. 175, 69 S. E. (2d) 915 (1952).

Cited in *State v. McCrae*, 222 S. C. 194, 72 S. E. (2d) 451 (1952).

CHAPTER 2.

BEER, ALE, PORTER AND WINE.

Article 2.

Permits for Sales.

Sec.

Sec.

4-212. Qualifications for permit.

4-212.1. Consideration of application when location without a municipality but within five miles of a State prohibiting sale of beer or wine.

ARTICLE 2.

Permits for Sales.

§ 4-212. Qualifications for permit.

No permit authorizing the sale of beer or wine shall be issued unless:

(1) The applicant and any agent, employee or servant of the applicant to be employed on the licensed premises shall be of good moral character;

(2) The applicant and any agent, employee or servant to be employed on the licensed premises, shall be a citizen of this State for at least one year prior to the date of application and shall have maintained therein his or her principal place of abode for at least one year prior to the date of application;

(3) The applicant has not within two years prior to the date of application had revoked any beer and wine permit issued to him;

(4) The applicant shall be 21 years of age or over; and

(5) The location of the proposed place of business of applicant shall in the opinion of the Tax Commission be a proper one.

1942 (42) 1739; 1954 (48) 1702.

Effect of amendment.—The amendment included in item (1) agents, employees and servants, added item (2), eliminated alco-

holic liquors from item (3) and added item (4).

Citizenship of applicant is a question of fact. Atty. Gen. Op., Apr. 19, 1954.

§ 4-212.1. Consideration of application when location without a municipality but within five miles of a State prohibiting sale of beer or wine.

In considering an application for a permit for the sale of beer or wine at a location within five miles of a political subdivision of a foreign State in which the sale of beer or wine is prohibited, the Commission shall in addition to the factors otherwise required to be considered take into account (a) the proximity of the location to the prohibited area, (b) the likelihood that large crowds will gather from time to time with attendant breaches of the peace, (c) the requirement of increased law enforcement officers (d) and any other factor which in its judgment should rightfully be considered before issuing the permit. These special considerations shall not apply where the application is made with respect to a location within the corporate limits of a municipality.

1954 (48) 1702.

The provisions of this section relating to application for permit within five mile area have no mandatory feature but merely

require consideration by commission. Atty. Gen. Op., Apr. 19, 1954.

§ 4-215. Acts prohibited on licensed premises.

Sale of beer to intoxicated person does not create nuisance.—The sale of beer by a licensed dealer to an intoxicated person is in violation of statute, but that act alone does not create a public nuisance at the

dealer's place of business. State v. Rackley, 221 S. C. 49, 68 S. E. (2d) 873 (1952).

Applied in South Carolina Tax Comm. v. McLain, 218 S. C. 285, 62 S. E. (2d) 505 (1950).

§ 4-217. Appeal from order of revocation or suspension.

Applied in South Carolina Tax Comm. v. McLain, 218 S. C. 285, 62 S. E. (2d) 505 (1950).

CHAPTER 4.

NUISANCES, ENFORCEMENT AND OTHER MISCELLANEOUS PROVISIONS.

ARTICLE 1.

*Nuisances.***§ 4-401. Unlawful sale, etc., of alcoholic liquors a common nuisance.**

This section is not void for uncertainty, but clearly denominates the doing of the enumerated acts as unlawful, with the penalty being provided in § 4-417. State v. McCrae, 222 S. C. 194, 72 S. E. (2d) 451 (1952).

It was not repealed by the Alcoholic Beverage Control Act. — The Alcoholic Beverage Control Act [1945 (44) 337],

codified as Chapter 1 of this Title, did not operate to repeal this section by implication. State v. McCrae, 222 S. C. 194, 72 S. E. (2d) 451 (1952).

The history of this section shows it to be independent of other acts, except the penalty which is provided in § 4-417. State v. McCrae, 222 S. C. 194, 72 S. E. (2d) 451 (1952).

§ 4-402. Resorts for drinking declared nuisance.

Applied in State v. McCrae, 222 S. C. 194, 72 S. E. (2d) 451 (1952).

§ 4-403. Warrant for arrest and search warrant; seizure.

Cited in State v. McCrae, 222 S. C. 194, 72 S. E. (2d) 451 (1952).

ARTICLE 2.

*Enforcement and Other General Provisions.***§ 4-417. Punishment for violations of law in cases not specifically prescribed.**

This section provides the penalty for the acts denominated as unlawful in § 4-

401. State v. McCrae, 222 S. C. 194, 72 S. E. (2d) 451 (1952).

Title 5.

Amusements and Athletic Contests.

- Chap. 1. Circuses, Carnivals and Other Travelling Shows, §§ 5-2 to 5-10.
 2. Motion Pictures, Etc., § 5-103.
 7. Dance Halls, Slot and Music Machines, Etc., §§ 5-625 to 5-638.21.

CHAPTER 1.

CIRCUSES, CARNIVALS AND OTHER TRAVELING SHOWS.

Sec.

5-2. Same; certain local exceptions.

5-6. Same; Darlington County.

Sec.

5-9.1. Same; Union County.

5-10. [Repealed.]

§ 5-2. Same; certain local exceptions.

The provisions of § 5-1 shall not apply within the limits of *Aiken, Allendale, Barnwell, Berkeley, Calhoun, Chester, Clarendon, Florence, Greenville, Greenwood, Hampton, Marlboro, Newberry, Orangeburg, Pickens, Richland, Saluda, Spartanburg* and *Sumter* Counties.

Carnivals and tent shows, shall be permitted to exhibit in said counties without license when they exhibit under the auspices of a regularly established post of the American Legion in the county in which such exhibitions are had; *provided*, that the arrangement between any such carnival or tent show and the Legion post under whose auspices it exhibits shall have been made at least three days before the commencement of any such exhibition.

The Aiken County Fair Association shall have the exclusive right to conduct a fair and/or carnival in *Aiken* County during the period from September fifteenth

to October fifteenth of each year. But this exclusive right shall apply only to the city of *Aiken* and an area of three miles surrounding said city.

Nothing herein contained shall be construed to relieve any person from the payment of the license tax on admissions imposed by article 7 of chapter 10 of Title 65.

1942 Code § 6333; 1932 Code § 6333; Civ. C. '22 §§ 5177, 5178, 5181-5186; Cr. C. '22 §§ 247-251; 1917 (30) 545; 1918 (30) 764; 1919 (31) 150; 1920 (31) 726, 752, 927; 1921 (32) 100, 224, 256, 331; 1922 (32) 906; 1929 (36) 57; 1930 (36) 1276; 1934 (38) 1484; 1935 (39) 266, 388, 421; 1937 (40) 241, 292; 1939 (41) 532; 1945 (44) 26; 1947 (45) 70, 131, 281; 1948 (45) 1632; 1952 (47) 2075.

Effect of amendment.—The amendment added the third paragraph.

§ 5-6. Same; Darlington County.

The Hartsville Boy Scout district may sponsor one circus annually.

1942 Code § 6333; 1932 Code § 6333; Civ. C. '22 §§ 5177, 5178, 5181-5186; Cr. C. '22 §§ 247-251; 1917 (30) 545; 1918 (30) 764; 1919 (31) 150; 1920 (31) 726, 752, 927; 1921 (32) 100, 224, 256, 331; 1922 (32) 906; 1929 (36) 57; 1930 (36) 1276; 1934 (38) 1484; 1935 (39) 266, 388, 421; 1937 (40) 241, 292; 1939 (41) 532; 1945 (44) 26; 1947 (45) 70, 131, 281; 1948 (45) 1632; 1954 (48) 1787.

Effect amendment.—Amendment added above sentence. Section otherwise unchanged.

Editor's note.—It appears that the above amendment is surplusage in view of § 5-1 excepting circuses.

§ 5-9.1. Same; Union County.

Any circus, carnival or other such admission charging show or amusement that usually exhibits under a tent or outdoors may exhibit in *Union* County without payment of any license fee or charge, if such exhibition is made under the auspices or sponsorship of a local eleemosynary association or organization and pursuant to a contract requiring such association or organization to pay the license for such exhibition and if such exhibition is first approved as to time and place by the executive secretary and treasurer of the Union County Fair Association.

1952 (47) 2838.

§ 5-10. Same; Union County.

Repealed by A. & J. R. 1952 (47) 2838.

Cross reference.—See now § 5-9.1.

CHAPTER 2.

MOTION PICTURES, ETC.

Sec.

5-103. Motion pictures, athletic sports and musical concerts on Sunday in

certain counties, cities and resorts.

§ 5-103. Motion pictures, athletic sports and musical concerts on Sunday in certain counties, cities and resorts.

It shall be lawful to exhibit publicly motion pictures, athletic sports and musical concerts and to engage therein from and after two o'clock P. M., on Sunday (a) in counties containing a city having a population of more than sixty-two thousand, (b) in cities from sixteen thousand to sixteen thousand one hundred in population according to the official United States census for 1940, (c) in counties containing a city having an exact population of five thousand seven hundred forty-seven according to the 1940 official United States census, (d) in cities with a population from six thousand two hundred and twenty-five to six thousand two hundred and fifty according to the official United States census for 1940, and (e) in incorporated seashore resorts, if the exhibition of such motion pictures and engagements in athletic sports is lawful on other days in the week; provided that no such amusements shall be exhibited or engaged in between the hours of seven P. M. and nine P. M. on Sundays.

In incorporated towns and cities a special permit must first be obtained from the governing body. Outside of incorporated towns and cities a special permit must first be obtained from the governing body of the county except in a county containing a city having an exact population of five thousand seven hundred forty-seven according to the 1940 official United States census.

Any person exhibiting publicly motion pictures, athletic sports or musical concerts in any such county or city on Sunday during any hour not herein authorized or without first obtaining the special permit herein required shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars or imprisonment of not more than thirty days.

1947 (45) 107; 1949 (46) 20, 127; 1951 (47) 526; 1952 (47) 1930.

Effect of amendment.—The amendment (1) tied the cities referred to in phrase (b) of the section to the 1940 census, (2) added the cities referred to in phrase (d) and (3) made the penalty clause refer to "any hours not herein authorized" where it formerly read "earlier than two o'clock P. M."

Cited in *Bishop v. Hanna*, 218 S. C. 474, 63 S. E. (2d) 308, 24 A. L. R. (2d) 808 (1951).

Public exhibition of motion pictures on Sunday unlawful in Marlboro County and city of Bennettsville. Atty. Gen. Op., Mar. 10, 1954.

§ 5-104. Same; in other counties, cities and towns.

Cited in *Bishop v. Hanna*, 218 S. C. 474, 63 S. E. (2d) 308, 24 A. L. R. (2d) 808 (1951).

This section is no longer effective, having expired six months after World War II. Atty. Gen. Op., Mar. 10, 1954.

CHAPTER 7.

DANCE HALLS, SLOT AND MUSIC MACHINES, ETC

Article 3.

Slot and Music Machines Generally.

Sec.

5-625. Hours of operation of music machines outside of municipalities in certain counties.

Article 3.1.

Music Machines, etc., in Horry County.

5-627.1. Operation of such machines outside of municipalities restricted.
5-627.2. Penalties.

Article 4.1.

Music Machines, etc., in Marion and Marlboro Counties.

5-636. Operation of machine restricted.
5-637. Penalty.

Article 4.2.

Music Machines, etc., in Chesterfield County.

Sec.

5-638. Operation of machines restricted.
5-638.1. Penalties.

Article 4.3.

Music Machines, etc., in Dorchester County.

5-638.20. Operation of machine restricted.
5-638.21. Penalties.

ARTICLE 3.

Slot and Music Machines Generally.

§ 5-625. Hours of operation of music machines outside of municipalities in certain counties.

It shall be unlawful for any owner, lessee, custodian or other person in possession, for himself or another, of any nickelodeon, piccolo, phonograph or other mechanical or automatic music box or machine to operate the same or suffer or permit the operation thereof in or about any store, filling station, highway or other public or semipublic place outside of the limits of any incorporated town in *Clarendon, Georgetown, Kershaw and Richland Counties* after ten-thirty o'clock P. M., and before seven o'clock A. M. or in *Darlington or Williamsburg Counties* after twelve o'clock midnight on Saturday and before seven o'clock A. M. on the Monday following or in any of said counties at any time in hearing distance of any church during church or other religious services. Every violation of the terms hereof shall be a misdemeanor and any person upon conviction shall be subject

for each violation to a fine of not less than five dollars and not more than fifty dollars or imprisonment for not more than thirty days.

1942 Code, § 1396-2; 1939 (41) 433; 1942 (42) 1603; 1952 (47) 1726; 1953 (48) 216.

Effect of amendments. — The 1952 1953 amendment added Williamsburg to amendment added Georgetown and the the counties covered by this section.

ARTICLE 3.1.

Music Machines, etc., in Horry County.

§ 5-627.1. Operation of such machines outside of municipalities restricted.

It shall be unlawful for any owner, lessee, custodian or other person, for himself or another, of any nickelodeon, piccolo, phonograph or other mechanical or automatic music box or machine to operate such music box or machine, or suffer or permit the operation thereof, in or about any store, filling station, highway or other public or semipublic place outside of the limits of any incorporated town in Horry County after eleven o'clock P. M. on Saturday and until seven o'clock A. M., Monday following, or at any time in hearing distance of any church during church or other religious services.

1953 (48) 66.

§ 5-627.2. Penalties.

Every violation of the terms of § 5-627.1 shall be a misdemeanor and any person upon conviction shall be subject, for each violation, to a fine of not more than one hundred dollars, or imprisonment for not more than thirty days.

1953 (48) 66.

ARTICLE 4.1.

Music Machines, etc., in Marion and Marlboro Counties.

§ 5-636. Operation of machine restricted.

It shall be unlawful for any owner, lessee, custodian or other person in possession, for himself or another, of any nickelodeon, phonograph or other mechanical or automatic music box or machine, to which is attached or connected an outside loud-speaker, to operate or permit the operation thereof in Marion County or in Marlboro County after ten o'clock P. M. or before eight o'clock A. M. of any day or between the hours of ten o'clock P. M. on Saturday and eight o'clock A. M. on Monday, without first disconnecting or turning off the outside loud-speaker.

1953 (48) 56, 260.

§ 5-637. Penalty.

Any person who violates the provisions of § 5-636 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars or by imprisonment for not more than thirty days. Each violation of the provisions of said section shall constitute a separate offense.

1953 (48) 56, 260.

ARTICLE 4.2.

Music Machines, etc., in Chesterfield County.

§ 5-638. Operation of machine restricted.

It shall be unlawful for any owner, lessee custodian or other person in possession, for himself or another, of any nickelodeon, piccolo, phonograph or other mechanical or automatic music box or machine, to which is attached or connected an outside loud-speaker, to operate or permit the operation thereof in Chesterfield County after eleven o'clock P. M. or before seven o'clock A. M. of any day, between the hours of eleven o'clock P. M. on Saturday and seven o'clock A. M. on the following

Monday or at any time in hearing distance of any church during church or other religious services, without first disconnecting or turning off the outside loud-speaker.
1954 (48) 1822.

§ 5-638.1. Penalties.

Any person who violates the provisions of § 5-638 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars or by imprisonment for not more than thirty days. Each violation of the provisions of said section shall constitute a separate offense.

1954 (48) 1822.

ARTICLE 4.3.

Music Machines, etc., in Dorchester County.

§ 5-638.20. Operation of machine restricted.

It is unlawful for any owner, lessee, custodian or other person in possession, for himself or another, of any nickelodeon, phonograph or other mechanical or automatic music box or machine, to which is attached or connected an outside loud-speaker, to operate or permit the operation thereof in *Dorchester County* after twelve o'clock P. M. or before nine o'clock A. M. of any day or between the hours of twelve o'clock P. M. on Saturday and nine o'clock A. M. on Monday, without first disconnecting or turning off the outside loud-speaker.

1954 (48) 1491.

§ 5-638.21. Penalties.

Any person who violates the provisions of § 5-638.20 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars or by imprisonment for not more than thirty days. Each violation of the provisions of said section shall constitute a separate offense.

1954 (48) 1491.

Title 6.

Animals.

Chap. 2. Dogs and Rabies, § 6-151.

4. Livestock and Poultry Generally, §§ 6-361 to 6-382.

5. Sanitary and Health Provisions, §§ 6-405 to 6-521.

CHAPTER 2.

DOGS AND RABIES.

Article 3.

Miscellaneous Provisions.

Sec.

6-151. When dogs are property.

ARTICLE 3.

Miscellaneous Provisions.

§ 6-151. When dogs are property.

Dogs shall be held to be property in any county of the State in which they are exempt from taxation.

1952 (47) 1898.

Editor's note.—This section comes from an amendment to § 2609 of the Code of 1942 dealing with the capitation tax on dogs. The General Assembly evidently failed to realize that that section and

others relating to the dog tax were repealed by implication by the Rabies Control Act of 1950 (1952 Code, §§ 6-121 to 6-141) which provided that the inoculation fee took the place of the former dog tax.

In view of the foregoing it would appear that the phrase "in any county of the State in which they are exempt from taxation"

in the above section would be surplusage under existing law.

CHAPTER 4.

LIVESTOCK AND POULTRY GENERALLY.*

Article 2.

Livestock Trespassing or Running at Large.

Sec.

6-312. Same; local exceptions in Berkeley County.

Article 4.

Branding or Earmarking Livestock.

6-361. Definitions.

6-362. Branding lawful.

6-363. Earmarking of livestock.

6-364. Only one brand permissible per person.

6-365. Wife or minor may have individual brand.

6-366. Application for adoption of brand.

6-367. Issue of certificate for brand.

6-368. Certificate to be recorded.

Sec.

6-369. Expiration of brands; renewal.

6-370. Notice of necessity of renewal.

6-371. Failure to renew amounts to abandonment.

6-372. Abandoned brands may be allowed to others.

6-373. Transfers of certificates.

6-374. Cancellation of registration.

6-375. Revocation of registration.

6-376. When livestock branded.

6-377. Branding of livestock purchased or acquired.

6-378. When branding unlawful.

6-379. Certificate as evidence of ownership of livestock.

6-380. Brand records.

6-381. Rules and regulations.

6-382. Penalties.

ARTICLE 2.

Livestock Trespassing or Running at Large.

§ 6-311. Domestic animals not to be permitted to run at large.

As to proof of negligence where cattle running at large were killed by a train, see *Johnson v. Atlantic Coast Line R. Co.*, 217 S. C. 190, 60 S. E. (2d) 226 (1950).

§ 6-312. Same; local exception in Berkeley County.

The suspensions provided above in this section shall continue until February 15 1955.

1953 (48) 163.

Effect of amendment.—The amendment changed the termination date of the suspension from February 15, 1953 to Febru-

ary 15, 1955. The other paragraphs of the section were not affected by the amendment and are therefore not set forth above.

ARTICLE 3.

Regulation of Stockyards, Dealers in Livestock, etc.

§ 6-334. Inspection; grant and revocation of permit.

Constitutionality.—The manner in which the livestock committee is appointed under this section does not constitute an invalid delegation of legislative power. *State v. Taylor*, 223 S. C. 526, 77 S. E. (2d) 195 (1953).

The intent of this section is that the

committee shall consist of seven persons, four of whom are to be appointed by the board of trustees of Clemson College and the other three to consist of the designated officers of the Livestock Dealers Association. *State v. Taylor*, 223 S. C. 526, 77 S. E. (2d) 195 (1953).

§ 6-337. Facilities required and condition thereof.

Quoted in *State v. Taylor*, 223 S. C. 526, 77 S. E. (2d) 195 (1953).

§ 6-339. Cattle to be tested for brucellosis.

Stated in *State v. Taylor*, 223 S. C. 526, 77 S. E. (2d) 195 (1953).

* See §§ 6-413 and 6-413.1 as to when may restrict importation of livestock, livestock products and poultry.

§ 6-341. Swine to be inoculated against cholera.

Stated in *State v. Taylor*, 223 S. C. 526,
77 S. E. (2d) 195 (1953).

§ 6-343. Infected or exposed animals.

Quoted in *State v. Taylor* 223 S. C. 526,
77 S. E. (2d) 195 (1953).

§ 6-345. Rules and regulations.

This section does not violate S. C. Const., Art. 3, § 1, by unlawfully attempting to delegate the law making authority of the legislature. *State v. Taylor*, 223 S. C. 526, 77 S. E. (2d) 195 (1953).

Cross reference.—For rules and regulations promulgated under authority of this section, see Rules and Regulations. Clemson Agricultural College, in Volume 7.

§ 6-347. Penalties.

Stated in *State v. Taylor*, 223 S. C. 526,
77 S. E. (2d) 195 (1953).

ARTICLE 4.

*Branding or Earmarking Livestock.***§ 6-361. Definitions.**

The following words and phrases, as used in this article, shall have the following meanings, unless the context otherwise requires:

(1) "*Livestock*" includes neat cattle, horses, mules, asses, hogs, sheep and goats; and

(2) "*Owner*" and "*stock owner*" mean any person who owns livestock.
1952 (47) 2175.

§ 6-362. Branding lawful.

It is lawful to brand livestock with the owner's brand in accordance with the provisions of this article.

1952 (47) 2175.

§ 6-363. Earmarking of livestock.

In addition to, or as an alternative to, a brand, any person may have an ear-mark for marking livestock. All provisions of this article relating to brands shall apply to earmarks.

1952 (47) 2175.

§ 6-364. Only one brand permissible per person.

No person shall have more than one brand.

1952 (47) 2175.

§ 6-365. Wife or minor may have individual brand.

A wife who owns livestock separate from her husband or a minor who owns livestock separate from his father or guardian may have a brand. The father or guardian of any minor who has a brand shall be responsible for the proper use thereof.

1952 (47) 2175.

§ 6-365. Application for adoption of brand.

Any person desiring to adopt any brand for branding livestock, which is not then the recorded brand of another, shall forward to the Secretary of State a facsimile of the desired brand together with a written application to adopt the brand. The application shall state where the brand will appear on the livestock. A fee of three dollars shall be enclosed with the application.

1952 (47) 2175.

§ 6-367. Issue of certificate for brand.

Upon receipt of the application and the fee the Secretary of State shall register the brand and issue to the applicant a certificate showing that his brand has been registered, unless the brand is already registered as the brand of another or un-

less the brand would probably be mistaken for a brand already registered, in either of which cases the Secretary of State shall return the facsimile and the fee to the applicant. The certificate shall show on its face the brand which has been registered and the place where the brand will appear on the livestock.

1952 (47) 2175.

§ 6-368. Certificate to be recorded.

Upon receipt of the certificate provided for in § 6-367 from the Secretary of State, the owner shall record the certificate with the clerk of court in every county in which he has livestock. For each recording the clerk shall receive a fee of one dollar. He shall record the brands in a book kept for the purpose and the book shall be open to inspection by the public.

1952 (47) 2175.

§ 6-369. Expiration of brands; renewal.

On July 1 1962 and on July first of every tenth year thereafter the registration, certification, and recording provided for in §§ 6-366 to 6-368 shall expire. But upon application filed within six months prior to the expiration of any term, the registration may be renewed for another term. Applications for renewal shall be accompanied by the same fee as is required for original applications. A certificate as provided for in § 6-367 shall be issued upon each renewal and the certificate shall again be recorded and the fee paid to the clerk of court as provided for in § 6-368.

1952 (47) 2175.

§ 6-370. Notice of necessity of renewal.

The Secretary of State shall notify registrants under this article of the necessity of renewal within the six months next preceding the expiration of registration by writing to the last known address of each registrant. The notice shall state that if the owner fails to renew the registration of his brand it will be declared abandoned and allowed to other applicants.

1952 (47) 2175.

§ 6-371. Failure to renew amounts to abandonment.

Failure to renew the registration of a brand as provided in § 6-369 shall constitute an abandonment of the brand.

1952 (47) 2175.

§ 6-372. Abandoned brands may be allowed to others.

Any brand which has been abandoned may be allowed to other applicants after the lapse of six months from the expiration of registration. But the Secretary of State may allow any abandoned brand to the former owner at any time before the brand is allowed to another.

1952 (47) 2175.

§ 6-373. Transfers of certificates.

Any brand registered under the terms of this article may be conveyed to another by an instrument in writing, in duplicate, duly executed, but the conveyance shall not be complete until the instrument has been registered with the Secretary of State. Upon registration of the instrument and payment of a fee of three dollars the Secretary of State shall issue to the purchaser, in his name, a new certificate for the remainder of the term of registration. The certificate shall be recorded and the fee shall be paid, as provided in § 6-368.

1952 (47) 2175.

§ 6-374. Cancellation of registration.

The Secretary of State shall cancel the registration of any brand:

(1) At the written request of the owner;

(2) Upon failure to renew the registration in accordance with the terms of this article; or

(3) Upon the order of any court of competent jurisdiction.

1952 (47) 2175.

§ 6-375. Revocation of registration.

The registration of any brand granted under this article may be revoked by the order of any court in this State upon a showing of improper use of the brand.

1952 (47) 2175.

§ 6-376. When livestock branded.

If livestock are branded by the owner, they shall be branded as follows: neat cattle, horses, mules and asses shall be branded before they are twelve months old; hogs, sheep and goats shall be branded before they are six months old. The ages specified herein shall not apply to livestock which have passed those ages at the time they are acquired by the owner or at the time the owner is granted a brand under this article. But all such livestock, if branded by the owner, shall be branded within one month after they are acquired by the owner or the time the owner is granted a brand under this article.

1952 (47) 2175.

§ 6-377. Branding of livestock purchased or acquired.

If any owner who purchases or acquires livestock from another brands the livestock with his own brand, he shall do so in the presence of at least two disinterested parties. The disinterested parties shall certify in writing that they witnessed the branding of the livestock. The certificate shall also state: where the branding occurred; with what brand, if any, the livestock were previously branded; and with what brand the livestock were branded or rebranded. The certificate shall be retained by the owner. It shall be unlawful to brand any livestock purchased or acquired from another other than in the manner required by this section.

1952 (47) 2175.

§ 6-378. When branding unlawful.

It is unlawful for any person to brand, or to cause to be branded, any livestock:

(1) With any brand unless it has been registered with and certified by the Secretary of State as his brand and has been recorded with the clerk of court in each county in which such person has livestock;

(2) With any brand which is registered, certified and recorded as the brand of another; or

(3) With any brand which has been abandoned or the registration of which has been cancelled, unless the brand has thereafter been granted to him.

1952 (47) 2175.

§ 6-379. Certificate as evidence of ownership of livestock.

In any criminal or civil action in which title to livestock is involved or proper to be proved, the certificate provided for in § 6-367 shall, when recorded as provided for in § 6-368, be prima facie evidence of ownership of any livestock bearing the brand shown on the face of the certificate. When livestock is brought into this State from another state or territory in transit beyond the boundaries of this State, a copy of a brand granted or held in the other state or territory, when certified to by the proper officer in that state, shall be received in evidence under the same circumstances and shall have the same effect as a certificate issued under the provisions of this article.

1952 (47) 2175.

§ 6-380. Brand records.

The Secretary of State shall keep an accurate record of all brands registered under the terms of this article and the names and addresses of the owners of the brands. These records shall be open to inspection by the public.

1952 (47) 2175.

§ 6-381. Rules and regulations.

The Secretary of State may promulgate rules and regulations which, in his judgment, may be necessary or proper to supplement or clarify the provisions of this article. The violation of any rule or regulation made and promulgated hereunder shall constitute a violation of this article.

1952 (47) 2175.

§ 6-382. Penalties.

Any person convicted of a violation of this article shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for not less than thirty days nor more than one year or by both such fine and imprisonment.

1952 (47) 2175.

CHAPTER 5.**SANITARY AND HEALTH PROVISIONS.****Article 1.****General Provisions.**

Sec.

6-405. Regulations on outbreak of foot and mouth disease, vesicular exanthema or rinderpest.

6-410. Funds in case of certain epidemics.

6-413. When restrict importation of livestock, livestock products and poultry.

6-413.1. Quarantine against importation of slaughtered pork from contagious disease areas.

Article 2.**Remedies in Case of Infection.**

6-425. Treatment or destruction of diseased animals.

6-433. Appraisal of animals condemned for certain diseases.

Article 6.**Feeding Garbage to Swine.**

Sec.

6-501 to 6-509. [Repealed.]

6-510. Definitions.

6-511. Application of Article.

6-512. Permit required to feed garbage to swine.

6-513. Application for permit.

6-514. Revocation or refusal of permit.

6-515. Garbage must be heated.

6-516. Care of garbage feeding premises.

6-517. Inspection of premises; records.

6-518. Hogs prohibited on garbage dumps.

6-519. Sale of raw garbage consuming hogs.

6-520. Administration and enforcement.

6-521. Penalties; injunctions.

ARTICLE 1.**General Provisions.****§ 6-401. Clemson to investigate diseases of domestic animals, etc.**

Cited in *State v. Taylor* (S. C.), 77 S. E. (2d) 195 (1953).

§ 6-405. Regulations on outbreak of foot and mouth disease, vesicular exanthema or rinderpest.

The board of trustees of The Clemson Agricultural College of South Carolina and the State Veterinarian may make specific regulations in case of an outbreak of foot and mouth diseases, vesicular exanthema or rinderpest.

1942 Code § 5806-39; 1932 Code § 5756; Civ. C. '22 § 2851; 1919 (31) 241; 1953 (48) 243.

Effect of amendment.—The amendment added "vesicular exanthema or rinderpest" to the scope of the section.

§ 6-410. Funds in case of certain epidemics.

Whenever the State Veterinarian shall certify to the Governor that an outbreak of foot and mouth disease, vesicular exanthema or rinderpest has occurred within

the bounds of the State, the Governor may execute a note or notes in the name of the State, countersigned by the Comptroller General and the State Treasurer, and may raise sufficient funds in that manner to be used in the eradication of the diseases. Such sum of money shall be placed in the State Treasury and be drawn on by warrants, issued by the proper officers of The Clemson Agricultural College of South Carolina in the usual manner that such warrants are issued, and shall be paid by the State Treasurer in the same manner. Such sum of money shall be used for the payment for destroyed animals, for the employment of additional help by the authorities of the College and for such other expenses as in the discretion of the board of trustees of the College may be necessary and incident to the eradication of the diseases.

1942 Code § 5806-40; 1932 Code § 5757; Civ. C. '22 § 2852; 1919 (31) 241; 1953 (48) 243.

Effect of amendment.—The amendment added vesicular exanthema and rinderpest to the scope of the section.

§ 6-413. When restrict importation of livestock, livestock products and poultry.

When any State, in the absence of a general quarantine, places an embargo or other restrictions on the importation of livestock, livestock products or poultry from this State, the Department shall forthwith impose a like restriction against the importation of livestock, livestock products or poultry from the State declaring the embargo or other restrictions which shall remain in force so long as the embargo or other restrictions declared by the other State remains in effect.

1954 (48) 1710.

§ 6-413.1. Quarantine against importation of slaughtered pork from contagious disease areas.

Whenever it comes to the attention of the department, either officially or otherwise, that V. E. or any other contagious disease is prevalent in any section of the United States, the department shall impose a quarantine against the importation into this State of any slaughtered pork of the particular area affected by the quarantine. This shall not apply to meat slaughtered prior to outbreak of the V. E. disease in that area.

1954 (48) 1710.

ARTICLE 2.

Remedies in Case of Infection.

§ 6-425. Treatment or destruction of diseased animals.

When two or more reputable citizens of any county in this State shall notify the Veterinarian that any animals, including poultry and domesticated fowls of every kind, in their county are affected with a contagious disease, the tendency of which is to cause the death of such animals, including the diseases commonly known as "foot and mouth disease," "vesicular exanthema," and "rinderpest," he shall investigate the same or cause an investigation thereof to be made. For such purpose he or any assistant of his shall have the right to go upon any premises on which such affected animals are or are supposed to be. The Veterinarian may treat such affected animals, at the expense of the owner of the same, or he may cause the same to be destroyed, under such rules and regulations as may be prescribed by the board of trustees of The Clemson Agricultural College of South Carolina. Except as otherwise expressly provided no compensation shall be paid to the owner of any animals destroyed under the provisions of this section.

1942 Code §§ 5749, 5750; 1932 Code §§ 5749, 5750; Civ. C. '22 § 2845; Civ. C. '12 § 1905; Civ. C. '02 § 1318; 1901 (23) 737; 1953 (48) 243.

Effect of amendment.—The amendment added vesicular exanthema and rinderpest to the scope of the section.

§ 6-433. Appraisal of animals condemned for certain diseases.

Should an outbreak of any of the diseases which are commonly known as "foot and mouth disease," "vesicular exanthema" or "rinderpest" occur, the value to be placed on animals condemned and destroyed on account of being affected with, or having been exposed to, any of such diseases shall be fixed as follows: The method of appraising such value shall be in accordance with the regulations provided by the United States Department of Agriculture and upon such appraisal being made the State shall pay one-half of the amount at which such livestock is valued, upon a warrant approved by the State Veterinarian and drawn by the proper authorities of The Clemson Agricultural College of South Carolina to the Comptroller General, who shall issue his warrant on the State Treasurer for such amount, the same to be paid as provided in § 6-410.

1942 Code §§ 5806-37, 5806-38; 1932 Code §§ 5754, 5755; Civ. C. '22 §§ 2849, 2850; 1919 (31) 241; 1953 (48) 243.

Effect of amendment.—The amendment added vesicular exanthema and rinderpest to the scope of the section.

ARTICLE 5.*Importation of Livestock.***§ 6-491. Imported livestock to be accompanied by health certificate.**

Cross reference.—As to further restriction on importation of livestock, livestock products and poultry, see §§ 6-413 et seq.

ARTICLE 6.*Feeding Garbage to Swine.***§§ 6-501 to 6-509. Garbage defined; penalties.**

Repealed by A. & J. R. 1954 (48) 1710.

Cross reference.—See now §§ 6-510 et seq.

§ 6-510. Definitions.

(1) "*Garbage*" regardless of previous processing means any animal or vegetable wastes resulting from handling, preparation, cooking and consumption of foods, including parts of animal carcasses, offal or contents of offal.

(2) "*Person*" means State, any municipality, political subdivision, institution, public or private corporation, individual, partnership or any other entity.

(3) A "*garbage dump*" is a place or area where ordinary household garbage is disposed of from two or more families.

1954 (48) 1710.

§ 6-511. Application of article.

This article shall not apply to any person who feeds only his own household garbage to swine, except that no person shall sell or offer for sale any hogs which have consumed any raw garbage within thirty days of sale, but in case of such sale no permit shall be required as provided elsewhere herein.

1954 (48) 1710.

Cross reference.—See § 6-519.

§ 6-512. Permit required to feed garbage to swine.

No person shall feed garbage to swine from more than two families or places without first securing a permit therefor from the livestock sanitary department of The Clemson Agricultural College of South Carolina or the county agricultural agent.

1954 (48) 1710.

§ 6-513. Application for permit.

Any person desiring to obtain a permit to feed garbage to swine shall make written application therefor to the department or the county agricultural agent

in accordance with requirements promulgated under authority of the board of trustees of the College.

1954 (48) 1710.

§ 6-514. Revocation or refusal of permit.

Upon determination that any person having a permit issued under this article, or who has applied for a permit hereunder, has violated or failed to comply with any of the provisions of this article, or any of the rules and regulations promulgated hereunder, the department may revoke such permit or refuse to issue a permit to an applicant therefor.

1954 (48) 1710.

§ 6-515. Garbage must be heated.

All garbage regardless of previous processing before it reaches the garbage feeding establishment or farm shall, before being fed to swine, be thoroughly heated to at least 212° F. (boiling temperature) for at least thirty minutes.

1954 (48) 1710.

§ 6-516. Care of garbage feeding premises.

Premises on which garbage feeding is permitted under this article must be kept free of collection of unused garbage and waste material in order that proper sanitation and rat and fly control measures can be practiced as a further means of prevention of spread of disease in either animal or human health.

1954 (48) 1710.

§ 6-517. Inspection of premises; records.

Any authorized representative of the department may enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the heating of garbage to be fed to swine as required by this article. And any such representative may examine any records or memoranda pertaining to the feeding of garbage to swine. The department may require maintenance of records relating to the operation of equipment for and procedure of treating garbage to be fed to swine. Copies of such records shall be submitted to the department on request.

1954 (48) 1710.

§ 6-518. Hogs prohibited on garbage dumps.

No person shall permit hogs on any garbage dump.

1954 (48) 1710.

§ 6-519. Sale of raw garbage consuming hogs.

It shall be unlawful for anyone to sell or offer for sale hogs which have consumed any raw garbage within a period of thirty days prior to date of sale.

1954 (48) 1710.

Cross reference.—See § 6-511.

§ 6-520. Administration and enforcement.

The department shall administer and enforce the provisions of this article and may make and enforce all rules and regulations which the department may deem necessary to carry out the purposes of this article.

1954 (48) 1710.

§ 6-521. Penalties; injunctions.

Any person who shall violate any of the provisions of, or who fails to perform any duty imposed by, this article, or who violates any rule or regulation promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars nor less than twenty-five dollars or imprisoned not to exceed thirty days. In addition thereto, such person may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

1954 (48) 1710.

Title 7.**Appeals.****CHAPTER 1.****GENERAL PROVISIONS.****§ 7-5. Appeal from verdicts prior to judgment.**

Applied in *McCants v. West Virginia Pulp, etc., Co.*, 223 S. C. 467, 76 S. E. (2d) 614 (1953).

§ 7-6. Notice of appeal stays execution of sentence.

Section inapplicable to suspension of driver's license under § 46-348.—*Parker v. South Carolina State Highway Dept.*, 224 S. C. 263, 78 S. E. (2d) 382 (1953).

§ 7-8. When bail allowed.

Supreme Court can grant bail in any case.—Supreme Court has power to issue writs and orders referred to in Art. 5, Sec. 4, of Constitution, and Legislature has no power to take away powers specifically granted to court by Constitution, and Supreme Court has inherent power to set

bond in any case and can grant bail, in its discretion, where sentence exceeds ten years, notwithstanding limitations of this section. *State v. Whitener*, — S. C. —, 81 S. E. (2d) 784 (1954).

Cited in *Maxey v. Manning*, 224 S. C. 320, 78 S. E. (2d) 633 (1953).

§ 7-12. Review of intermediate orders affecting judgment.

Applied in *Johnson v. Abney Mills*, 219 S. C. 231, 64 S. E. (2d) 641 (1951).

§ 7-16. Definition of real property.

Cited in *McDonald v. Welborn*, 220 S. C. 10, 66 S. E. (2d) 327 (1951).

CHAPTER 4.**APPEALS TO CIRCUIT COURTS IN OTHER CASES.****ARTICLE 1.***Generally.***§ 7-317. Judgment on appeal.**

Stated in *North Augusta v. Fennell*, 221 S. C. 112, 69 S. E. (2d) 121 (1952).

CHAPTER 5.**APPEALS TO SUPREME COURT.****§ 7-401. In what cases.**

Cited in *State v. Cottingham*, 224 S. C. 181, 77 S. E. (2d) 897 (1953).

§ 7-405. Notice of intent to appeal.**I. IN GENERAL.**

Cited in *Ex parte Orr*, 110 F. Supp. 153 (1952).

II. NOTICE OF INTENTION TO APPEAL.

The failure to show entry of a judgment is not so essential, etc.

In accord with paragraph under this catchline in Code. See *McCants v. West Virginia Pulp, etc., Co.*, 223 S. C. 467, 76 S. E. (2d) 614 (1953).

§ 7-406. Case and exceptions; objections; settlement.**III. SERVICE.**

Where notice of appeal served before formal entry of judgment. — An appeal from an order of the court of common pleas dismissing exceptions to the Industrial Commission's award in a workmen's

compensation case was properly dismissed for failure to serve a proposed case and exceptions within 30 days after service of notice of appeal, notwithstanding that there was no formal entry of judgment on the order, since § 72-357 does not require en-

try of judgment by counsel in compensation cases, and, if the order should be likened to a verdict, it was at once appeal-

able under § 7-5. *McCants v. West Virginia Pulp, etc., Co.*, 223 S. C. 467, 76 S. E. (2d) 614 (1953).

§ 7-409. Waiver by failure to perfect appeal.

Four days' notice of motion to dismiss is sufficient.—Four days' notice of motion to dismiss an appeal for failure to perfect it, which is the usual practice, is sufficient. *State v. Cottingham*, 224 S. C. 181, 77 S. E.

(2d) 897 (1953).

Sufficiency of proof that appeal not perfected.—See *State v. Cottingham*, 224 S. C. 181, 77 S. E. (2d) 897 (1953).

§ 7-416. How judgment to execute conveyance stayed.

Cited in *Purdy v. Moise*, 223 S. C. 298, 75 S. E. (2d) 605 (1953).

§ 7-422. When notice of appeal stays proceedings below.

An appeal from an intermediate or interlocutory order does not divest the trial court of jurisdiction to proceed in matters not involved in the appeal. *Johnson v. Brandon Corp.*, 221 S. C. 160, 69 S. E. (2d) 594 (1952).

An appeal from an order denying plaintiff stockholder the right to pre-trial examination of defendant corporation's president stayed the proceedings in the court below only in so far as they involved the order appealed from, and did not preclude the court below from hearing defendant's motion to dismiss the action upon the ground that plaintiff had lost her status

as a stockholder in the corporation. *Johnson v. Brandon Corp.*, 221 S. C. 160, 69 S. E. (2d) 594 (1952).

Effect of failure to make or perfect appeal from order overruling demurrer.—It is true that an interlocutory appeal may be taken to the Supreme Court from an order overruling a demurrer, but the failure to make or perfect such an appeal does not affect the right of the Supreme Court to review the matter in connection with an appeal from the final judgment. *Crotts v. Fletcher Motor Co.*, 219 S. C. 204, 64 S. E. (2d) 540 (1951).

§ 7-425. Printing of testimony.

Printing of testimony necessary for consideration of respondent's additional sustaining grounds.—Where the Supreme Court could not have considered several issues raised under the additional sustaining grounds of respondent without the benefit of the testimony taken on the trial,

the lower court committed no error in directing that the entire trial proceedings, testimony and evidence be printed by appellant as the transcript of record. *Herring v. Lawrence Warehouse Co.*, 222 S. C. 226, 72 S. E. (2d) 453 (1952).

Title 8.

Banking, Commercial Paper and Finance.

Chap. 2. State Board of Bank Control, §§ 8-52 to 8-62.

3. Banks and Banking, §§ 8-131 to 8-237.

5. Banks Doing a Safe Deposit or Trust Company Business, §§ 8-571 to 8-580.

5.1. Safe Deposit Boxes, §§ 8-591 to 8-600.3.

6. Building and Loan Associations, Etc., § 8-606.

7. Cooperative Credit Unions, §§ 8-701 to 8-727.

CHAPTER 1.

MONEY AND INTEREST.

§ 8-3. Maximum interest rates; exceptions.

I. GENERAL CONSIDERATION.

Applied in *Anderson v. Purvis*, 220 S. C. 259, 67 S. E. (2d) 80 (1951).

§ 8-5. Usury.**I. DEFINITIONS AND GENERAL CONSIDERATION.**

The courts will not hesitate to pierce the veil of any plan designed to evade the usury law and in doing so will disregard the form and consider the substance of the transaction. *Brown v. Crandall*, 218 S. C. 124, 61 S. E. (2d) 761 (1950).

III. APPLICATION OF SECTION.

Usury cannot be predicated upon the fact that property is sold on credit at a higher price than would be charged if sold for cash, so long as it appears that the

price charged is in fact fixed for the purchase of goods on credit with no intention or purpose of defeating the usury laws, although the difference between the cash price and the credit price, if considered as interest, amounts to more than the legal rate. But when the sale is in fact at an agreed cash price, and the form of sale on credit is resorted to for the purpose of evading the statute against usury, the transaction will be deemed usurious. *Brown v. Crandall*, 218 S. C. 124, 61 S. E. (2d) 761 (1950).

CHAPTER 2.**STATE BOARD OF BANK CONTROL.**

Sec.

8-52. Appointment of members.

8-59. [Repealed.]

Sec.

8-61. Initiation of criminal prosecution.

8-62. Penalties for obstructing examiners.

§ 8-52. Appointment of members.

The State Board of Bank Control shall be composed of five members, one of whom shall be the State Treasurer as an ex-officio member, who shall be chairman. The remaining four members shall be appointed by the Governor. Two shall be engaged in commercial banking and recommended by the State Bankers' Association, one shall be engaged in the building and loan association business and recommended by the State Savings and Loan League and one shall be in the cash depositories business and recommended by the representatives of the cash depositories affiliated with the State Bankers' Association.

1942 Code § 7829; 1936 (39) 1484; 1953 (48) 357.

Effect of amendment. — Formerly the representative of the building and loan association business was recommended by the State Bankers' Association instead of the State Savings and Loan League.

This section is not unconstitutional as an illegal delegation of legislative power. *Floyd v. Thornton*, 220 S. C. 414, 68 S. E. (2d) 334 (1951).

Nor does it violate the federal Constitution and anti-trust laws.—The requirement of this section that appointments be made by the Governor upon the recommendation of the State Bankers' Association and the cash depositories associated with the State Bankers' Association does not render this chapter violative of the federal Constitution and anti-trust laws. *Floyd v. Gage*, 192 F. (2d) 137 (1951).

§ 8-57. Approval of charters of banks and building and loan associations; branch banks.

This section is constitutional and effective in all respects. *Floyd v. Thornton*, 220 S. C. 414, 68 S. E. (2d) 334 (1951).

§ 8-59. Compensation of chief examiner and assistants.

Repealed by A. & J. R. 1953 (48) 357.

§ 8-61. Initiation of criminal prosecution.

The report shall be considered by the Board at its next meeting and should the Board conclude that the matters covered in such report of the chief examiner do constitute an apparent violation of existing statutes or rules or regulations of the Board, then the Board may direct the chief examiner to file a detailed written report of such apparent criminal violations of existing statutes or rules or regulations with the grand jury for the county in which the apparent criminal violations were committed, or direct him to make affidavit before a magistrate and obtain a warrant. The Board may direct the chief examiner to file a copy of the detailed written report of the apparent criminal violations with the solicitor for the

judicial circuit in which the county in which the apparent criminal violations were committed is located.

1942 Code § 7829-12; 1937 (40) 219; 1953 (48) 357.

Effect of amendment.—The latter portion of the section has been rewritten to correct obvious mechanical errors in the section as printed in the 1952 Code.

§ 8-62. Penalties for obstructing examiners.

Any person who obstructs or interferes with the chief examiner or any of his assistants or agents in any way in performance of his duties, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be subject to imprisonment for not more than one year, or a fine of not more than one thousand dollars, or both, in the discretion of the court.

1942 Code § 7874-4; 1941 (42) 46; 1953 (48) 357.

Effect of amendment.—The latter portion of the section has been rewritten to correct obvious mechanical errors in the section as printed in the 1952 Code.

CHAPTER 3.

BANKS AND BANKING.

Article 3.

Certain Powers.

Sec.

8-131. General powers of banking corporation.

Article 4.

Capital and Capital Stock.

8-145. Capital and Surplus required for branch banks.

8-154. Earnings set aside for surplus; reserve against deposit.

Article 6.

Deposits.

8-178. Penalty; jurisdiction of magistrate.

Article 9.

Loans and Investments.

8-237. Investment in farm loan bonds; accountability for interest thereon.

ARTICLE 3.

Certain Powers.

§ 8-131. General powers of banking corporation.

* * *

(1) Receive and pay out the lawful currency of the country;

1953 (48) 357.

Effect of amendment.—The amendment eliminated the word "of" which formerly appeared between the words "out" and "the." Only subparagraph (1) of the section was affected by the amendment and consequently the other paragraphs are not set forth above.

ARTICLE 4.

Capital and Surplus Stock.

§ 8-145. Capital and surplus required for branch banks.

For each branch bank that is established the parent bank must have subscribed and paid in a total unimpaired capital of at least twenty-five thousand dollars above the minimum requirements set forth in § 8-144 and at least the amount of capital stock and surplus that would be required of the parent and all of its branches if each were an independent bank.

1942 Code §§ 7831, 7832; 1932 Code §§ 7835, 7836; 1926 (34) 953; 1928 (35) 1301; 1930 (36) 1353; 1936 (39) 1484; 1953 (48) 357.

Effect of amendment.—The amendment substituted the word "in" for the word "it" after the word "paid."

§ 8-154. Earnings set aside for surplus; reserve against deposit.

Every bank or banking institution shall set aside to its surplus account not less than one-tenth of its annual net earnings each year until its surplus shall be equal to at least twenty-five per cent of its capital stock. It shall also retain and maintain

at all times, either in cash or as cash in banks, three per cent of its time deposits and seven per cent of its checking deposits. Cash items of longer standing than ten days may not constitute a part of such reserve to be so set aside. The State Board of Bank Control shall enforce the provisions of this section.

1942 Code § 7844; 1932 Code § 7863; Civ. C. '22 § 3993; Civ. C. '12 § 2655; 1909 (26) 81; 1923 (33) 159; 1933 (38) 296; 1936 (39) 1484; 1953 (48) 357.

Effect of amendment.—The amendment word “earnings” in the next to the last substituted the word “reserve” for the sentence.

ARTICLE 6.

Deposits.

§ 8-171. Payment of deposits made in name of two persons.

Cited in *Davis v. Davis*, 223 S. C. 182, 75 S. E. (2d) 46 (1953); *Hawkins v. Thack-* 224 S. C. 445, 79 S. E. (2d) 714 (1954).

§ 8-176. Drawing and uttering fraudulent check.

Applied in *State v. Jenkins*, 222 S. C. 359, 72 S. E. (2d) 829 (1952).

§ 8-178. Penalty; jurisdiction of magistrate.

Any person so convicted shall be punished by a fine or imprisonment, in the discretion of the court. If the amount of the check, draft or order be less than seventy-five dollars, the offense may be triable in a magistrate's court.

1942 Code § 1167; 1932 Code § 1167; Cr. C. '22 § 60; Cr. C. '12 § 208; 1909 (26) 21; 1914 (28) 489; 1923 (33) 120; 1954 (48) 1444.

Effect of amendment.—Amendment in- creased amount of check from less than twenty dollars to less than seventy-five dollars triable in magistrate's court.

ARTICLE 9.

Loans and Investments.

§ 8-237. Investment in farm loan bonds; accountability for interest thereon.

Any savings bank, banking institution or trust company organized under the laws of this State may invest in or lend money on the security of Federal farm loan bonds issued by any Federal land bank pursuant to the Federal Farm Loan Act as amended, bonds issued by the Federal Farm Mortgage Corporation pursuant to the provisions of an act of Congress known as the “Federal Farm Mortgage Corporation Act,” Federal Intermediate Credit Bank debentures issued pursuant to the Federal Farm Loan Act as amended and debentures issued by the Central Bank for Cooperatives organized under the Farm Credit Act of 1933. No such savings bank, banking institution or trust company organized under the laws of this State shall account for a greater rate of interest than the amount actually received on such investment.

1942 Code § 9049; 1932 Code § 9049; Civ. C. '22 § 5461; 1918 (30) 163; 1919 (31) 133; 1934 (38) 1493; 1952 (47) 1893.

Effect of amendment.—The amendment added to the classes of permissible investments Federal Intermediate Credit Bank debentures and debentures issued by the Central Bank for Cooperatives.

CHAPTER 5.

BANKS DOING A SAFE DEPOSIT OR TRUST COMPANY BUSINESS.

Article 1.

Banks Doing a Safe Deposit Business.

Sec.

8-571 to 8-580. [Repealed.]

ARTICLE 1.

Banks Doing a Safe Deposit Business.

§§ 8-571 to 8-580. Banks doing a safe deposit business.

Repealed by A. & J. R. 1952 (47) 1932.

Editor's note.—For new legislation on the subject of safe deposit boxes, see Chapter 5.1, §§ 8-591 to 8-600.3.

CHAPTER 5.1.

SAFE DEPOSIT BOXES.

Sec.

8-591. Definitions.

8-592. Leasing of boxes and acceptance of property for safekeeping authorized.

8-593. Leases to minors.

8-594. Access to box of fiduciary.

8-595. Refusal of access because of adverse claim.

8-596. Removal of property of a decedent prior to qualification of personal representative.

Sec.

8-597. Opening box when rental one year in default.

8-598. Notary's certificate.

8-599. Disposition of contents.

8-600. Sale of contents unclaimed for two years.

8-600.1. Disposition of proceeds of sale.

8-600.2. Disposition of private documents of no apparent value.

8-600.3. Illegal use of words "safe deposit" or "safety deposit".

§ 8-591. Definitions.

As used in this chapter:

(1) "*Lessee*" means a person contracting with a lessor for the use of a safe deposit box;

(2) "*Lessor*" means a bank, cash depository or trust company renting safe deposit facilities authorized by law to operate in this State;

(3) "*Safe deposit box*" means a safe deposit box, vault or other safe deposit receptacle maintained by a lessor and the rules relating thereto apply to property or documents kept in safekeeping in the bank's vault.

1952 (47) 1932.

§ 8-592. Leasing of boxes and acceptance of property for safekeeping authorized.

Subject to the provisions of this chapter, any bank, cash depository or trust company may maintain and lease safe deposit boxes and may accept property or documents for safekeeping.

1952 (47) 1932.

§ 8-593. Leases to minors.

A bank may lease a safe deposit box to, and in connection therewith deal with a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

1952 (47) 1932.

§ 8-594. Access to box of fiduciary.

When a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(1) By any one or more of the persons acting as executors or administrators;

(2) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing signed by all other persons so acting; and

(3) By any agent authorized in writing signed by all of the persons acting as fiduciaries.

1952 (47) 1932.

§ 8-595. Refusal of access because of adverse claim.

An adverse claim to the contents of a safe deposit box or to property held in safekeeping is not sufficient to require the lessor to deny access to its lessee unless:

(1) The lessor is directed to do so by a court order issued by a court of competent jurisdiction; or

(2) The safe deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity and the adverse claim is supported by a written statement of facts disclosing that it is made by or on behalf of a beneficiary and that there is reason to know that the fiduciary will misappropriate the trust property.

A claim is also an adverse claim when (a) one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, (b) one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers or (c) it is claimed that a lessee is the same person as one using another name.

1952 (47) 1932.

§ 8-596. Removal of property of a decedent prior to qualification of personal representative.

A lessor shall permit a person named in a court order for the purpose or, if no order has been served upon the lessor, the spouse, a parent, an adult descendant or a person named as an executor in a copy of a purported will produced by him to open and examine the contents of a safe deposit box leased by a decedent or any documents delivered by a decedent for safekeeping in the presence of an officer, manager or assistant manager of the lessor. And the lessor, if so requested by such person, must deliver:

(1) Any writing purporting to be a will of the decedent to the executor if one be therein named and otherwise to the court having jurisdiction of the decedent's estate;

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person making the request for a search; and

(3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein.

No other contents shall be removed pursuant to this section until an executor or administrator qualifies and makes claim to the contents.

The removal of the contents of any safe deposit box or deposit for safekeeping other than such as hereinabove permitted shall remain subject to §§ 65-504 to 65-505 of the Code of Laws of South Carolina, 1952.

1952 (47) 1932.

§ 8-597. Opening box when rental one year in default.

If the rental due on a safe deposit box has not been paid for one year, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within thirty days. If the rental is not paid within thirty days from the mailing of the notice, the box may be opened in the presence of an officer, manager or assistant manager of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor.

1952 (47) 1932.

§ 8-598. Notary's certificate.

The notary public present at such opening shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package mentioned in § 8-599 and a copy of the certificate shall be sent by registered mail to the last known address of the lessee.

1952 (47) 1932.

§ 8-599. Disposition of contents.

The contents of any box so opened shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

1952 (47) 1932.

§ 8-600. Sale of contents unclaimed for two years.

If the contents of the safe deposit box have not been claimed within two years of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within thirty days, the contents of the box will be sold at public auction at a specified time and place or, in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once seven days prior to the sale in a newspaper of general circulation in the community. If the articles are not claimed and the accrued rent and disbursements of lessor paid, they may then be sold in accordance with the notice.

1952 (47) 1932.

§ 8-600.1. Disposition of proceeds of sale.

The balance of the proceeds, after deducting accumulated charges, including the expense of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by him or, if none, shall be deemed a deposit account with the bank, cash depository or trust company operating the safe deposit facility and shall be identified on the books of the bank as arising from the sale of contents of a safe deposit box.

1952 (47) 1932.

§ 8-600.2. Disposition of private documents of no apparent value.

Any documents or writings of a private nature, having little or no apparent value, need not be offered for sale, but shall be retained, unless claimed by the owner, for a period of two years after which they may be destroyed.

1952 (47) 1932.

§ 8-600.3. Illegal use of words "safe deposit" or "safety deposit."

It is a criminal offense against this chapter were any person to use the words "*safe deposit*", "*safety deposit*" or other words deceptively similar thereto in connection with the rental of storage space or in the title or name under which business was done except (1) a person subject to the jurisdiction of the State Board of Bank Control, (2) a manufacturer or dealer in safe deposit facilities or equipment or (3) an association the membership of which is composed of officers or institutions subject to the jurisdiction of the State Board of Bank Control or a similar agency of another state or of the United States.

1952 (47) 1932.

CHAPTER 6.

BUILDING AND LOAN ASSOCIATIONS, ETC.

Sec.

8-606. Powers with respect to Federal Home Loan Bank Act.

§ 8-602. Shares issued to two persons.

Joint deposit owned by survivor.—In action for judgment that niece was owner of a joint deposit, where uncle made deposit in federal savings and loan association, and passbook was in name of uncle or niece, after which uncle died, it was clear under the evidence that it was the contractual intent of all concerned in the transaction that the survivor of the joint depositors should take the balance of the deposit remaining at the time of the death of the other, and the agreement had the sanction

of the statute, although the latter is not conclusive of the rights existing between the depositors or their representatives. Of course, as recognized by the trial judge, another case of joint deposit might disclose facts which would negative the intent of survivorship which has been found here. *Hawkins v. Thackston*, 224 S. C. 445, 79 S. E. (2d) 714 (1954).

Cited in *Davis v. Davis*, 223 S. C. 182, 75 S. E. (2d) 46 (1953).

§ 8-603.1. Loans on real estate and other security.

Editor's note.—Catchline enlarged to include other security.

§ 8-606. Powers with respect to Federal Home Loan Bank Act.

(4) Invest in the bonds of any Federal home loan bank;

1953 (48) 357.

Effect of amendment.—The amendment substituted the word "bonds" for the word "banks." As only subdivision (4) of

the section was affected by the amendment, only that subdivision is set forth above.

CHAPTER 7.

COOPERATIVE CREDIT UNIONS.

Sec.

8-701. "Cooperative credit union" defined.

8-702. Certificate of incorporation.

8-703. Bylaws.

8-704. Powers.

8-705. Meetings of members.

8-706. Directors, credit committee and supervision committee.

8-707. Oath and terms of office of directors and committeemen.

8-708. Executive officers.

8-709. Pay of officers and committeemen.

8-710. Powers of board.

8-711. Approval of loans.

8-712. Powers of supervision committee.

8-713. Capital stock.

8-714. Entrance fee.

8-715. Shares and deposits of minors and trustees.

Sec.

8-716. Expulsion of members.

8-717. Settlement with member withdrawing or expelled.

8-718. Fiscal year.

8-719. Investments.

8-720. Payment of loans.

8-721. Guaranty fund.

8-722. Supervision committee report prior to considering dividend payment.

8-723. Declaration and payment of dividends.

8-724. Dissolution.

8-725. Commissioner of Labor to supervise credit unions.

8-726. Reports.

8-727. Use of words "cooperative credit union" restricted.

§ 8-701. "Cooperative credit union" defined.

In this chapter the words "*cooperative credit union*" shall mean a cooperative association formed for the purpose of promoting thrift among its members and to enable them, when in need, to obtain for productive and provident purposes moderate loans of money for short periods and at reasonable rates of interest.

1952 (47) 1950.

§ 8-702. Certificate of incorporation.

Ten or more citizens of this State, all employees of the same employer, who have associated themselves by an agreement in writing for the purpose of forming

a cooperative credit union under the provisions of this chapter may apply to the Commissioner of Labor for a certificate certifying that he is satisfied that the proposed field of operation is favorable to the success of such cooperative credit union and that the standing of the proposed members is such as to give reasonable assurance that its affairs will be administered in accordance with the spirit of this chapter. When the Commissioner of Labor is so satisfied he shall issue such a certificate. Upon the filing of such certificate in the office of the Secretary of State and the payment to him of a charter fee of three dollars, the Secretary of State shall thereupon issue to such cooperative credit union a certificate of incorporation.

1952 (47) 1950.

§ 8-703. Bylaws.

The bylaws of each cooperative credit union shall prescribe:

- (1) The name of the credit union;
 - (2) The purposes for which it is formed;
 - (3) The conditions of residence or occupation which qualify persons for membership;
 - (4) The par value of shares of capital stock;
 - (5) The conditions on which shares may be paid in, transferred and withdrawn;
 - (6) The system for encouraging members to increase their holdings of shares;
 - (7) The conditions on which deposits may be received and withdrawn;
 - (8) The method of receipting for money paid on account of shares or deposits;
 - (9) The number of directors and their term of office and the number of members of the credit committee and their term of office;
 - (10) The duties of the several officers;
 - (11) The fines, if any, which shall be charged for failure to meet obligations to the corporation punctually;
 - (12) The date of the annual meeting of members;
 - (13) The manner in which the members shall be notified of the meetings;
 - (14) The number of members which shall constitute a quorum at meetings; and
 - (15) Such other regulations as may seem necessary.
- 1952 (47) 1950.

§ 8-704. Powers.

A cooperative credit union may receive the savings of its members in payment for shares or on deposit, may lend to its members at reasonable rates of interest, not to exceed one per cent per month on unpaid loan balances, may invest, as hereinafter provided the funds so accumulated and make loans of them to its members, may borrow from banks, savings banks, trust companies or other credit unions or persons and loan such money to its members and may undertake such other activities relating to the purposes of the association as its bylaws may authorize.

1952 (47) 1950.

§ 8-705. Meetings of members.

The annual meeting of the credit union shall be held at such time and place as the bylaws prescribe. Special meetings may be held by order of the directors or the supervision committee and the clerk shall give notice of special meetings upon request, in writing, of ten members. Notice of all meetings of the credit union shall be given in the manner prescribed by the bylaws. No person shall be entitled to vote who has not been a member for more than three months, but this restriction shall not apply during the first twelve months of existence of the credit union. No member shall vote by proxy or have more than one vote. At the annual meeting the members shall, upon recommendation of the board of directors, declare dividends and fix the amount of the entrance fee. At any meeting the members may decide upon any question of interest to the credit union and upon the appeal of two members may reverse decisions of the credit committee or board of directors and,

by a three-fourths vote of those present, provided the notice of the meeting shall have specified the question to be considered, may amend the bylaws.

1952 (47) 1950.

§ 8-706. Directors, credit committee and supervision committee.

At the annual meeting the members shall elect from their members a board of directors of not less than five members, a credit committee of not less than three members and a supervision committee of three members. The method of election and length of term of the members of the board of directors, credit committee and supervision committee shall be as specified in the by-laws. No member of the board of directors shall be a member of the credit committee or of the supervision committee, nor shall one person be a member of more than one of the committees.

1952 (47) 1950.

§ 8-707. Oath and terms of office of directors and committeemen.

All directors and all members of the committees, as well as all officers whom they may elect, shall be sworn and shall hold their several offices until others are elected and qualified in their stead. A record of every such qualification shall be filed and preserved with the records of the credit union.

1952 (47) 1950.

§ 8-708. Executive officers.

At its first meeting the board of directors shall elect from their number a president, a vice-president, a clerk and a treasurer, who shall be the executive officers of the corporation.

1952 (47) 1950.

§ 8-709. Pay of officers and committeemen.

No officer, director or credit committee member shall receive any compensation, directly or indirectly, for the services he performs for the credit union as such officer, director or credit committee member, except the treasurer, who may be compensated for his services in the amount and in the way and manner provided for by the board of directors.

1952 (47) 1950.

§ 8-710. Powers of board.

The board of directors shall have the general management of the affairs, the funds and the records of the credit union and shall meet as often as may be necessary. It shall be the special duty of the board of directors:

- (1) To act upon all applications for membership;
- (2) To act upon the expulsion of members;
- (3) To fix the amount of the surety bond which shall be required of each officer having custody of funds;
- (4) To determine the rate of interest which shall be allowed on deposits;
- (5) To determine the rate of interest which shall be charged on loans;
- (6) To fill vacancies on the board of directors or on the credit committee of the credit union, until the election and the qualification of members to fill the vacancies;
- (7) To make recommendations to meetings of the members relative to the amount of the entrance fee; the maximum number of shares which may be held, and the maximum amount which may be lent to, any one member; the dividend to be declared; amendments to the bylaws; and any other matters which, in their opinion, the members should decide; and
- (8) To approve applications for loans to members of the credit committee.

1952 (47) 1950.

§ 8-711. Approval of loans.

The credit committee shall approve every loan or advance made by the credit union. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired and the security offered. No loan shall be made unless (a) the credit committee is satisfied that it promises to benefit the borrower and (b) it has the unanimous approval of those members of the committee who were present when it was considered or (c) if any member of the committee shall disapprove thereof. But the applicant for a loan may appeal from the decision of the credit committee to the board of directors. Loans to members of the credit committee shall be approved by the board of directors.

1952 (47) 1950.

§ 8-712. Powers of supervision committee.

The supervision committee shall inspect the securities, the cash and the accounts of the credit union and supervise the acts of its board of directors, credit committee and officers. At any time the supervision committee by unanimous vote may suspend the credit committee or any officer elected by the board of directors and by a majority vote may call a meeting of the shareholders to consider any violation of this chapter or of the bylaws or any practice of the credit union which, in the opinion of the supervision committee, is unsafe and unauthorized. Within seven days after suspension of the credit committee the supervision committee shall cause notice to be given of a special meeting to take such action relative to such suspension as may seem necessary. The supervision committee shall fill vacancies in their own number until the next annual meeting.

1952 (47) 1950.

§ 8-713. Capital stock.

The capital stock of the credit union shall be unlimited in amount. Shares of capital stock may be subscribed and paid for in such manner as the bylaws shall prescribe, but no certificate of shares shall be issued until the shares have been fully paid up. The par value of each share of the capital stock shall be five dollars.

1952 (47) 1950.

§ 8-714. Entrance fee.

As an initial payment for the privilege of membership, each member shall pay an entrance fee of at least one dollar, besides subscribing for not less than one share of capital stock.

1952 (47) 1950.

§ 8-715. Shares and deposits of minors and trustees.

Shares may be issued and deposits received in the name of a minor and such shares and deposits may, in the discretion of the board of directors, be withdrawn by such minor or by his parent or guardian and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such minor. If no other notice of the existence and the terms of such trust has been given in writing to the credit union, such shares or deposits may, upon the death of the trustee, be withdrawn by the person for whom the amount of such shares was paid in or for whom such deposit was made or by his legal representative.

1952 (47) 1950.

§ 8-716. Expulsion of members.

The board of directors may expel from the credit union any member (a) who has not carried out his engagements with the credit union, (b) who has been convicted of a criminal offense, (c) who neglects or refuses to comply with the provisions of this chapter or the bylaws of the credit union, (d) whose private life is a source of scandal, (e) who habitually neglects to pay his debts, (f)

who shall become insolvent or bankrupt or (g) who shall have deceived the credit union with regard to his property, resources, credit or use of borrowed money. But no member shall be so expelled until he has been informed in writing of the charges against him and until an opportunity has been given him, after reasonable notice, to be heard thereon.

1952 (47) 1950.

§ 8-717. Settlement with member withdrawing or expelled.

The amounts paid in on shares or deposited by members who have withdrawn or who have been expelled shall be paid to them, less all accrued interest and other gains or profits, but in order of withdrawal or expulsion and only as funds therefor become available and after deducting any amounts due by the members to the credit union. But such expulsion shall not operate to relieve a member from any remaining liability to the credit union.

1952 (47) 1950.

§ 8-718. Fiscal year.

The fiscal year of every such cooperative credit union shall end at the close of business on December thirty-first.

1952 (47) 1950.

§ 8-719. Investments.

The capital, the deposits and the surplus funds of the credit union shall be either lent to the members for such purposes and upon such security and terms as the credit committee shall approve or be deposited to the credit of the credit union in savings banks, trust companies, State banks incorporated under the laws of this State, National banks or other credit unions or invested in any investment which is legal for savings banks in this State.

1952 (47) 1950.

§ 8-720. Payment of loans.

A borrower may repay the whole or any part of his loan on any day on which the office of the credit union is open for the transaction of business. For the failure to pay the interest or any installment required by the terms of the loan, the borrower may be fined if the bylaws so prescribe.

1952 (47) 1950.

§ 8-721. Guaranty fund.

Immediately before the payment of each dividend there shall be set apart as a guaranty fund twenty per cent of the net income which has accumulated during the fiscal year. Such fund and the investments shall belong to the credit union and shall be held to meet contingencies or losses in its business. All entrance fees shall be added at once to the guaranty fund. Upon recommendation of the board of directors the members at an annual meeting may increase and, whenever the fund equals ten per cent of the amount of capital stock actually paid in, may decrease the proportion of profits which is required by this section to be set apart as a guaranty fund.

1952 (47) 1950.

§ 8-722. Supervision committee report prior to considering dividend payment.

Immediately before a meeting of the board of directors called to recommend the declaration of a dividend, the supervision committee shall make a thorough audit of the repairs, the disbursements, the income, the assets and the liabilities of the credit union for the fiscal year and shall make a full report thereon to the directors. The report shall be read at the annual meeting and shall be filed and preserved with the records of the credit union.

1952 (47) 1950.

§ 8-723. Declaration and payment of dividends.

At the annual meeting upon recommendation of the board of directors a dividend may be declared from undivided surplus remaining after the deduction of all expenses, losses, interest on deposits and the amount required to be set apart as a guaranty fund. Such dividend shall be paid on all fully-paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled only to a proportional part of the dividend, calculated from the first day of the month following such payment in full. Dividends due to a member shall be paid to him in cash or credited to the account of partly-paid shares for which he has subscribed.

1952 (47) 1950.

§ 8-724. Dissolution.

At any meeting specially called to consider the subject, the members, upon the unanimous recommendation of the board of directors, may vote to dissolve the credit union, provided at least two-thirds of the members are present at such meeting and provided not more than ten members, either in person or by written notice, object thereto. A committee of three members shall thereupon be elected to liquidate the assets of the credit union and each share of the capital stock, according to the amount paid in thereon, shall be entitled to its proportion of the proceeds after all deposits and debts of the credit union have been paid.

1952 (47) 1950.

§ 8-725. Commissioner of Labor to supervise credit unions.

Every cooperative credit union organized under the provisions of this chapter shall be subject to the supervision of the Commissioner of Labor. The Commissioner of Labor shall require such cooperative credit unions to keep such books as he may deem necessary for the proper conduct of their business. He shall make an examination and demand a sworn report by the officers of the transaction of such cooperative credit union's business and may institute necessary proceedings for the prosecution of any officer or directly misapplying the cooperative credit union's funds. The Commissioner of Labor may make reasonable rules and regulations for cooperative credit unions chartered by this State including the establishment of reasonable examination fees. The Commissioner of Labor may accept a report from a certified public accountant as to the financial affairs of a cooperative credit union in lieu of an examination by his representative or representatives.

1952 (47) 1950.

§ 8-726. Reports.

Within thirty-one days after the last business day of December in each year every cooperative credit union shall make a report to the Commissioner of Labor, in such form as the Commissioner of Labor may prescribe, signed by its president and its treasurer and by a majority of its supervision committee. Such report shall certify and make oath, that it is correct according to the best knowledge and belief of the president, the treasurer and the supervision committee of the cooperative credit union. Every cooperative credit union shall pay a filing fee of ten dollars at the time of filing the annual report provided by this section. Any cooperative credit union which neglects to make the annual report within the time prescribed shall forfeit to the State five dollars for each day during which such neglect continues unless the Commissioner of Labor for good and valid reasons has granted the cooperative credit union a reasonable extension of time.

1952 (47) 1950.

§ 8-727. Use of words "cooperative credit union" restricted.

No person, partnership, association or corporation, except corporations formed under the provisions of this chapter, shall hereafter transact business under any name or title which contains the three words "cooperative credit union", or any combination of two or more of those words, except those expressly authorized herein to be formed or any association or corporation composed of cooperative credit unions formed under the provisions of this chapter or under the Federal Credit Union Act. Any person, partnership, association or corporation which violates the provisions of this section may be enjoined from doing business under such name or title at the instance of any stockholder of any cooperative credit union legally organized under this chapter.

1952 (47) 1950.

CHAPTER 8.

THE NEGOTIABLE INSTRUMENTS LAW.

ARTICLE 2.

Form and Interpretation.

§ 8-811. Form of negotiable instruments.

The notation on a check "1941 Ford Coach" could not be construed to affect the negotiable character of the instrument, for, even if it should be construed as a statement of the consideration for which

the check was given, the statement of the consideration of a note does not affect its negotiability. *Bank of Fort Mill v. Rollins*, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

§ 8-818. When payable on demand.

A check in which no time for payment is stated is a demand instrument under

this section. *Bank of Fort Mill v. Rollins*, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

ARTICLE 4.

Negotiation.

§ 8-855. Special endorsement; endorsement in blank.

Endorsement of check without designating endorsee.—Where check contained the name of the payee written on the bank of it, without any designated endorsee, this constituted an endorsement in blank, and,

under this section, "an instrument so endorsed is payable to bearer, and may be negotiated by delivery". *Bank of Mill v. Rollins*, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

ARTICLE 5.

Rights of the Holder.

§ 8-882. Who is holder in due course.

Bank cashing check for payee held holder in due course. *Bank of Fort Mill*

v. Rollins, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

§ 8-883. When person not deemed holder in due course.

Cashing check on day after issuance not unreasonable delay.—Where plaintiff cashed check for payee on the day after its issuance by defendant, there was no unreasonable delay in negotiating the check

which would, of itself, prevent plaintiff from being a holder in due course. *Bank of Fort Mill v. Rollins*, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

§ 8-885. When title defective.

For related case, see *Thomas & Howard Co. v. Fowler*, — S. C. —, 82 S. E. (2d) 454 (1954), in which it was held that statement by plaintiff's agent that unless defendants secured their indebtedness to plaintiff by a

mortgage plaintiff would have defendants closed up, was nothing more than threat that unless secured, plaintiff would resort to legal proceedings to collect its account, and did not constitute duress.

§ 8-886. What constitutes notice of infirmity.

Quoted in *Bank of Fort Mill v. Rollins*, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

§ 8-887. Rights of holder in due course.

Bank cashing check for payee was a holder in due course for value of the check and held same free of any defenses which the maker might have had against the payee. *Bank of Fort Mill v. Rollins*, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

And fact that check was subject to stop-

payment order was no defense.—Fact that check was subject to stop-payment instructions by the maker could not avail the maker as a valid defense in action against him brought by bank which cashed check for payee. *Bank of Fort Mill v. Rollins*, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

ARTICLE 6.

*Liability of Parties.***§ 8-891. Contract of maker.**

The maker's liability on the instrument is primary and unconditional until payment. He remains the ultimate debtor, the person who ought to pay the debt, in preference to, and in exoneration of, all the

other parties to the paper, who in some form or other are entitled to have final recourse to him. *Bank of Fort Mill v. Rollins*, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

ARTICLE 10.

*Form and Interpretation of Bills of Exchange.***§ 8-981. Definition of bill of exchange.**

Quoted in *Bank of Fort Mill v. Rollins*, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

ARTICLE 17.

*Promissory Notes and Checks.***§ 8-1072. Definition of check.**

Applied in *Bank of Fort Mill v. Rollins*, 217 S. C. 464, 61 S. E. (2d) 41 (1950).

Title 9.

Boards and Commissions.

Chap. 1. Historical Commission, §§ 9-1 to 9-16.

1.1. Archives, §§ 9-17 to 9-34.

3. Reorganization Commission, § 9-206.

4. Research, Planning and Development, §§ 9-302 to 9-310.

7. Cemeteries, §§ 9-551 to 9-963.

CHAPTER 1.

HISTORICAL COMMISSION.

Sec.

9-1 to 9-16. [Repealed.]

§§ 9-1 to 9-16. Personnel; annual meeting and report.

Repealed by A. & J. R. 1954 (48) 1752.

Cross reference.—See now §§ 9-17 et seq. for new legislation on archives.

CHAPTER 1.1.

ARCHIVES.

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| Sec. | Sec. |
| 9-17. Designation of chapter. | 9-26. Archives Council. |
| 9-18. Objective and purpose of Department. | 9-27. Rules and regulations; seal; gifts; reports; policies. |
| 9-19. Commission control Department; personnel. | 9-28. Housing for records. |
| 9-20. Selection and appointment of non-ex-officio members; terms; vacancy. | 9-29. Availability and protection of records; copies. |
| 9-21. Chairman; vice-chairman; meetings. | 9-30. Commission publish certain information relating to public records. |
| 9-22. Expenses; per diem. | 9-31. State records transfer to commission. |
| 9-23. Director; other staff members. | 9-32. County records transfer to department. |
| 9-24. Director not to do other work for pay; furnish free information. | 9-33. Acceptance of private records; public examination. |
| 9-25. Director assist in preservation of public records. | 9-34. Destruction of records. |

§ 9-17. Designation of chapter.

This chapter may be cited as the Archives Act.
1954 (48) 1752.

§ 9-18. Objectives and purposes of Department.

The objectives and purposes of the South Carolina Archives Department shall be:
(1) the preservation and administration of those public records that have already been transferred to the custody of the Department and those that may be transferred and accepted by the Department in the future;

(2) the collection by purchase or otherwise of the originals or transcripts of public records in other States or counties relating to South Carolina;

(3) the preservation and administration of the private records in the custody of the Department and those that may be added by deposit, gift or purchase in the future;

(4) the editing and publication of documents, treatises, and other papers relating to the history of South Carolina;

(5) the stimulation of research, study and other activity in the field of South Carolina history, genealogy and archaeology;

(6) the approval of the inscriptions for all historical markers or other monuments erected on State highways or other State property;

(7) the improvement of standards for the making, care and administration of public records; and

(8) the performance of such other acts and requirements as may be enjoined by law.

1954 (48) 1752.

§ 9-19. Commission Control Department; personnel.

The South Carolina Archives Department shall be under the control of the South Carolina Archives Commission, consisting of four ex-officio members, the heads, respectively, of the departments of history of the University of South Carolina, The Citadel, the Military College of South Carolina, The Clemson Agricultural College of South Carolina and Winthrop College, the South Carolina College for Women and their successors in their respective offices and three non-ex-officio members selected and appointed as provided in § 9-20.

1954 (48) 1752.

§ 9-20. Selection and appointment of non-ex-officio members; terms; vacancy.

The three non-ex-officio members shall be nominated, one by the South Carolina Historical Society, one by the American Legion, Department of South Carolina and one by the South Carolina Historical Association and appointed by the Governor. Each shall serve for a term of five years incumbents elected by the South

Carolina Historical Society and the American Legion shall serve as members until June 30 1955. The incumbent representing the South Carolina Historical Association shall serve until June 30 1955. In case of a vacancy caused by the death or resignation of one of the three appointive members, the vacancy shall be filled for the unexpired term by that organization which nominated the member so vacating.

1954 (48) 1752.

§ 9-21. Chairman; Vice-Chairman; Meetings.

The Commission may elect its chairman and vice-chairman, who shall be chosen annually to serve during the fiscal year but who may serve for successive terms. The Commission shall hold at the office of the Commission at least one regular meeting during the year and as many special meetings as may be necessary. Special meetings may be called by the chairman or in his absence by the vice-chairman. Four members of the Commission shall constitute a quorum.

1954 (48) 1752.

§ 9-22. Expenses; per diem.

All members of the Commission shall be reimbursed for expenses incurred in attending meetings and otherwise performing their duties under the direction of the Commission. The members who are not employed by the State shall receive the per diem paid by the State to members of boards and commissions during their attendance at meetings.

1954 (48) 1752.

§ 9-23. Director; other staff members.

The Commission may elect an executive officer for the Department to be known as the Director and on recommendation of the Director appoint all other members of the staff. The active management and administration of the Department shall be committed to the Director, who at the time of his election must have the qualifications of special training or experience in archival or historical work.

1954 (48) 1752.

§ 9-24. Director not to do other work for pay; furnish free information.

The Director shall not do any additional work for pay. He shall furnish information free to the citizens of the State.

1954 (48) 1752.

§ 9-25. Director assist in preservation of public records.

Upon the request of any State or county official the Director shall examine the records in his custody and make recommendations regarding their preservation.

1954 (48) 1752.

§ 9-26. Archives Council.

The South Carolina Archives Council shall consist of the Secretary of State, the Attorney General and the State Auditor, ex-officio. The Council shall aid and advise the Commission on all matters relating to the transfer of records from the agencies in which they were created to the custody of the Commission and more specifically act upon the recommendations of the Commission regarding the destruction of useless records in accordance with the procedure prescribed in § 9-34.

1954 (48) 1752.

§ 9-27. Rules and regulations; seal; gifts; reports; policies.

The Commission may:

(1) make rules and regulations for its own government and the administration of the Department;

(2) adopt a seal for use in official departmental business; control the expenditure in accordance with law of such public funds as may be appropriated to the Department;

(3) accept gifts, bequests and endowments for purposes consistent with the objectives of the Department;

(4) make annual reports to the General Assembly of the receipts, disbursements, work and needs of the Department; and

(5) adopt policies designed to fulfill the duties and attain the objectives of the Department as established by law.

1954 (48) 1752.

§ 9-28. Housing for records.

The records, both public and private, in the custody of the Commission shall be kept in a fireproof building, or buildings, assigned to it by the State. Until a more suitable building can be provided, the World War Memorial is designated the building for this purpose and is hereby placed under State maintenance.

1954 (48) 1752.

§ 9-29. Availability and protection of records; copies.

The Commission shall cause all records committed to its custody for permanent preservation to be arranged and made available to the public, either in original form or copies, at reasonable times in the buildings assigned to it for the purpose. All restrictions on the use of confidential records imposed by law shall continue to apply. The records shall be protected against deterioration, mutilation, loss or destruction. The Director is the legal custodian of the records in the custody of the Commission. He shall upon demand of any person furnish certified copies of the records on payment in advance of fees as prescribed by law. Copies thus issued, when certified by the Director under the seal of the Department, shall have the same legal force and effect as if certified by their original custodian.

1954 (48) 1752.

§ 9-30. Commission publish certain information relating to public records.

From time to time the Commission shall assemble and publish information regarding paper, ink, filing, binding and any other matter that will be useful in improving the standards of making, caring for and administering public records.

1954 (48) 1752.

§ 9-31. State records transfer to Commission.

Unless otherwise directed by law, all records of any State agency shall upon the termination of the existence and functions of that agency be transferred to the custody of the Commission. The head of any active State agency may transfer to the Commission such records as are not needed for the transaction of the current business of his office. Records from these various sources may be accepted by the Commission if they are of the type that should be permanently preserved and the necessary space is available in the buildings provided for the preservation of public records.

1954 (48) 1752.

§ 9-32. County records transfer to Department.

Any county officer may with the consent of the county governing body and the county delegation in the General Assembly, transfer to the Department such records legally in his custody as are not needed for the transaction of the current business of his office. If in the opinion of the Commission the records so offered for transfer are of the type that should be permanently preserved, it may accept them, if necessary space is available in the buildings assigned to the Department.

1954 (48) 1752.

§ 9-33. Acceptance of private records; public examination.

The Commission shall not solicit private records, but if its services are necessary to safeguard such records it may accept, either as a gift or deposit, collections offered by their legal owners or custodians. All such papers shall be open to inspection.

tion and examination for the purpose of research in like manner as are the public records. Neither the State nor the Commission shall be responsible for the loss of private records accepted for deposit.

1954 (48) 1752.

§ 9-34. Destruction of records.

Any records now in the custody of the Department and any records of defunct State agencies transferred in the future to the Department in accordance with the provisions of § 9-31 that are found to have no significance, importance or value may be recommended for destruction by the Director. Any State officer may recommend for destruction any records in his custody that have no significance, importance, value or that he is not required by law to retain in his custody. All such recommendations shall be acted on by the Commission, and, if approved they shall be referred to the Council. The decision of the Council shall be final, and, if the recommendation is approved, the Council shall issue in writing a certificate authorizing the destruction of the records. An accurate descriptive list of the records so disposed of and a record of the disposal itself shall be filed and preserved by the Commission and by the department or agency in which the records originated.

1954 (48) 1752.

CHAPTER 3.

REORGANIZATION COMMISSION.

Sec.

9-206. Composition of Commission.

§ 9-206. Composition of Commission.

The State Reorganization Commission shall be composed of thirteen members who shall serve for terms of two years, of whom one shall be the chairman of the ways and means committee of the House of Representatives, one shall be the chairman of the judiciary committee of the House of Representatives, three shall be members of the House of Representatives elected by the House of Representatives, one shall be the chairman of the finance committee of the Senate, one shall be the chairman of the judiciary committee of the Senate, three shall be members of the Senate elected by the Senate and three shall be appointed by the Governor, one of whom may be a member of the State Development Board or some other State board, who shall serve ex officio. In the case of a vacancy in the membership of the Commission it shall be filled in the manner of the original election or appointment.

1948 (45) 1643; 1954 (48) 1745.

Effect of amendment.—The amendment changed Research, Planning and Development Board to State Development Board.

CHAPTER 4.

RESEARCH, PLANNING AND DEVELOPMENT.

Sec.

9-302. Definitions.

9-304. Composition of board and term of office of members.

Sec.

9-310. Additional duties formerly exercised by other Boards or Commissions.

§ 9-302. Definitions.

(3) The "*Department*" means the Department of Development;

(4) The "*Board*" means the State Development Board; and

(5) The "*Director*" means the Director of Development.

1945 (44) 156; 1954 (48) 1745.

Effect of amendment.—The amendment changed Department of Research, Planning and Development to Department of Development and State Research, Plan-

ning and Development Board to State Development Board. The section otherwise remains effective.

§ 9-304. Composition of Board and term of office of members.

The Department of Development shall be governed by board consisting of five citizens of the state to be appointed by the Governor upon the advice and consent of the Senate. One member of the Board shall be a citizen of the first or second congressional district, one member shall be a citizen of the third or four congressional district, one member shall be a citizen of the fifth or sixth congressional district and the other two members shall be appointed from the State at large. The members of the Board having originally been appointed for terms of one, two, three, four and five years, respectively, the term of office of each member shall hereafter be for a period of five years. Any vacancies occurring during a term of office shall be filled in the same manner as the original appointment but shall be for the unexpired term.

1945 (44) 156; 1954 (48) 1745.

Effect of amendment.—The amendment changing Department of Research, Planning and Development to Department of Development.

§ 9-310. Additional duties formerly exercised by other Boards or Commissions.

The former State Planning Board, State Board of Housing, Building Council of South Carolina, South Carolina Commerce Development Board, South Carolina Intra-Coastal Waterway Commission, South Carolina Board for Promotion of External Trade, and Natural Resources Commission having been abolished, the State Development Board shall have the following additional duties formerly imposed on said boards, commissions and councils:

1942 Code §§ 3272, 3442-4, 3442-22, 3442-35, 5271-3, 5271-10, 6031-1, 6734; 1932 Code §§ 3272, 6734; 1925 (34) 160; 1929 (36) 254; 1933 (38) 176, 478; 1934 (38) 1314; 1935 (39) 120, 397; 1938 (40) 1612, 1902; 1940 (41) 1921; 1942 (42) 1680; 1945 (44) 156; 1954 (48) 1745.

Effect of amendment.—The amendment changed State Research, Planning and Development Board to State Development Board in the first paragraph. The section otherwise remains effective.

CHAPTER 7.

CEMETERIES.*

Sec.	Sec.
9-551. Regulation of perpetual care cemeteries necessary.	9-556. Refusal or renewal of licenses.
9-552. Appointment and terms of State cemetery Board.	9-557. Maintenance of trust fund.
9-553. Compensation; meetings.	9-558. Initial trust fund deposit required.
9-554. The Board may promulgate all necessary rules and regulations to effectuate the purposes of this Chapter.	9-559. Allocate portion of each sale to trust fund.
9-555. May require cemeteries selling perpetual care lots to be licensed; audits.	9-560. Cemeteries to display signs at entrances.
	9-561. Penalties.
	9-562. Cemeteries exempted.
	9-563. Invalidity.

§ 9-551. Regulation of perpetual care cemeteries necessary.

It is hereby to be necessary in the public interest that cemeteries or burial grounds advertising or selling "perpetual care" or "endowment care" in connection with the sale of cemetery lots or burial spaces be subject to sufficient regulation by the State to insure the establishment of sound business practices necessary to furnish the perpetual care or endowment care guaranteed. The need for establishing some regulation lies in the following facts found to be true: That there is no provision of law at the present time requiring the owner or operator of a perpetual care cemetery to establish any trust fund whatsoever, and unscrupulous operators can advertise

* As to Municipal cemeteries see §§ 47-1401 et seq.

and sell perpetual care lots and spaces without making any provision for the future furnishing of such services.

1954 (48) 1767.

§ 9-552. Appointment and terms of State Cemetery Board.

There is hereby created a State Cemetery Board, to consist of three members to be appointed by the Governor, for the purpose of administering the provisions of this chapter. The terms of office of the original appointive members shall expire on the first day of July of the years 1955, 1956 and 1957 and thereafter appointments shall be for a three year term.

1954 (48) 1767.

§ 9-553. Compensation; meetings.

The members of the Board shall serve without compensation. The Board shall meet at least once a year and shall be subject to the call of the chairman at other times.

1954 (48) 1767.

§ 9-554. Rules and regulations.

The Board may promulgate all necessary rules and regulations to effectuate the purposes of this chapter.

1954 (48) 1767.

§ 9-555. May require cemeteries selling perpetual care lots to be licensed; audits.

The Board may require that each cemetery selling perpetual care lots or grave spaces be licensed annually or biennially, and that a fee not exceeding twenty-five dollars be paid for each such license or renewal thereof. The board shall audit the books of each perpetual care cemetery at least once every two years, and more often if necessary, to insure that the cemetery is complying with the provisions of this chapter but the board may, in its discretion, accept the sworn statement of a certified public accountant as to what the books of the cemetery show with reference to its irrevocable trust fund, in lieu of the audit by the board itself.

1954 (48) 1767.

§ 9-556. Refusal or renewal of licenses.

If the provisions of this chapter are not complied with, the Board may refuse to issue a license or renewal thereof to any cemetery.

1954 (48) 1767.

§ 9-557. Maintenance of trust fund.

All cemeteries, whether operated for profit or otherwise, which advertise, hold out to the public or sell perpetual care or endowment care in connection with the sale or lease of burial lots or grave spaces shall establish and maintain with a State or national bank or trust company doing business in this State an irrevocable trust fund, the income only of such fund to be available to the cemetery in the furnishing of perpetual care.

1954 (48) 1767.

§ 9-558. Initial trust fund deposit required.

In the case of any cemetery established after March 26 1954, which cemetery offers perpetual care or endowment care, an initial deposit of five thousand dollars shall be made to the trust fund referred to in § 9-557, and additions thereto shall be made as required by § 9-559, as lots or grave spaces are sold.

1954 (48) 1767.

§ 9-559. Allocate portion of each sale to trust fund.

Whenever any cemetery lot or grave space, wherein perpetual care is promised or guaranteed, is sold by any cemetery, it shall, within ninety days after the lot or grave

space has been paid for, transmit to the trustee for addition to the trust fund referred to in § 9-557, the sum of six dollars per grave space of ten per cent of the sales price, whichever is greater.

1954 (48) 1767.

§ 9-560. Cemeteries to display signs at entrances.

All cemeteries in this State shall display a sign at each entrance, containing letters not less than six inches in height, stating "Perpetual Care", "Endowment Care", "No Perpetual Care" or "No Endowment Care", dependent upon whichever method of operation the cemetery is using. Those cemeteries which furnish perpetual care to some portions and no perpetual care to other portions shall display the aforesaid signs on the appropriate sections of the cemetery to which the sign refers.

1954 (48) 1767.

§ 9-561. Penalties.

Violation of any of the provisions of this chapter shall constitute a misdemeanor and shall be punishable by a fine of one hundred dollars or imprisonment of thirty days, or both, for each violation.

1954 (48) 1767.

§ 9-562. Cemeteries exempted.

The provisions of this chapter shall not apply to municipally owned cemeteries, eleemosynary cemeteries, church cemeteries or family burying grounds.

1954 (48) 1767.

§ 9-563. Invalidity.

The provisions of this chapter shall be severable, and if any provision shall be held to be unconstitutional, the same shall not affect the validity of the remaining provisions.

1954 (48) 1767.

Title 10.

Civil Remedies and Procedure.

Chap. 2. Limitation of Civil Actions, §§ 10-145 to 10-150.

3. Parties, §§ 10-231 to 10-238.

4. Venue, § 10-303.11.

5. Summonses, Orders of Publication and Service of Papers generally, §§ 10-436 to 10-437.

7. Pleadings, § 10-610.

14. Trial and Certain Incidents thereof, § 10-1210.

18. Judgments and Decrees generally, § 10-1532.

33. Remedies of Minors, Incompetents and Females, §§ 10-2584 to 10-2587.

CHAPTER 1.

GENERAL PROVISIONS.

§ 10-2. How time computed.

Computing running of statute of limitations.—Under this section, construed in connection with the South Carolina statute of limitations, the time within which an action must be brought will be com-

puted by "excluding the first day and including the last", and the day of the accrual of the cause of action is excluded in computing the statutory period. *Macri v. Flaherty*, 115 F. Supp. 739 (1953).

§ 10-3. Definition of real property.

Cited in *McDonald v. Welborn*, 220 S. C. 10, 66 S. E. (2d) 327 (1951).

§ 10-9. Definition of an action.

Cited in *Fordham v. Fordham* (S. C.),
76 S. E. (2d) 299 (1953).

CHAPTER 2.**LIMITATION OF CIVIL ACTIONS.****Article 3.****Actions Other than for Recovery of Realty.****Sec.**

10-150. Actions by State.

Sec.

10-145. Two years.

ARTICLE 1.*General Provisions.***§ 10-101. When action deemed commenced.**

An action is begun when process is lodged with the sheriff for service, etc.

In accord with paragraph under this catchline in Code. See *Bell v. City of Anderson*, Westbrook Advance Sheets, No. 16921, filed Oct. 28, 1954.

Delivery to federal marshal is equivalent to delivery to sheriff.—A federal marshal is vested by federal statute with all the powers which the sheriff has in the state in which his district lies. Thus the delivery of the summons and complaint and five copies thereof to the marshal for service upon the defendants was equivalent to a similar request upon the sheriff to perform a like service. *Macri v. Flaherty*, 115 F. Supp. 739 (1953).

The delivery on December 23, 1952, of the summons and complaint and five copies thereof, to the federal marshal with the intent that they be actually served upon the defendants and the subsequent service on the Chief Highway Commissioner on December 30, 1952, was a compliance with this section, and the action was commenced on December 23, 1952. *Macri v. Flaherty*, 115 F. Supp. 739 (1953).

The day of the accrual of the cause of action is excluded in computing the statutory period, under § 10-2, construed in connection with the South Carolina statute of limitations. *Macri v. Flaherty*, 115 F. Supp. 739 (1953).

§ 10-102. General rule as to time for commencement.

Time of accrual of action, etc.

The Supreme Court of South Carolina has held that the statute of limitations begins to run when the cause of action accrues and whenever there is a plaintiff who can sue, and a defendant who can be sued. *Macri v. Flaherty*, 115 F. Supp. 739

(1953).

The day of the accrual of the cause of action is excluded in computing the statutory period, under § 10-2, construed in connection with the South Carolina statute of limitations. *Macri v. Flaherty*, 115 F. Supp. 739 (1953).

§ 10-103. Exceptions; defendant out of State.

Persons included in section.

The South Carolina Supreme Court has held that this section applies not only to a resident of this State who has gone abroad temporarily, and then returns, but also to one who has never been a resident, and

this rule will be applied by a federal court, although the plaintiff, under § 10-431, could have had the summons and complaint served upon the Chief Highway Commissioner. *Macri v. Flaherty*, 115 F. Supp. 739 (1953).

§ 10-116. Clause in contract not in conformity to statute of limitations void.

Cited in *McCrary v. United States Fidelity, etc., Co.*, 110 F. Supp. 545 (1953).

ARTICLE 2.*Actions for Recovery of Real Property.***§ 10-124. Action by individual for recovery of land.**

Cross reference.—As to adverse possession, see notes to § 10-2421.

Cancellation of deeds for forgery.—Where the gravamen of the cause of action stated in the complaint was cancellation of deeds on the ground of forgery, the action was not one for the recovery of real property within the contemplation of this section, but was governed by subd

(7), of § 10-143. *McKinnon v. Summers*, 224 S. C. 331, 79 S. E. (2d) 146 (1953).

Mortgagee's possession as such not adverse.—Where mortgagee entered into possession of property and continued such possession as such, his holding would not be adverse until he distinctly disavowed and repudiated his mortgagee relationship and notice thereof was brought home to the

mortgagors, and neither this statute nor any other statute of limitations would commence to run under the circumstances of this case until notice of adverse possession

was brought home to the mortgagors. *Knight v. Hilton*, 224 S. C. 452, 79 S. E. (2d) 871 (1954).

§ 10-128. Persons under disability.

Infancy of one cotenant delays running of statute against all. — See *Adams v.*

Adams, 220 S. C. 131, 66 S. E. (2d) 809 (1951).

§ 10-129. After forty years, no action whatever allowed.

Cited in *Outlaw v. Moise*, 222 S. C. 24, 71 S. E. (2d) 509 (1952).

ARTICLE 3.

Actions Other than for Recovery of Realty.

§ 10-143. Six years.

I. GENERAL CONSIDERATION.

Last day for commencing action. — Where the personal injuries for which the plaintiff sought damages were received on December 23, 1946, the plaintiff had, as the last day, December 23, 1952, within which to commence her action. *Macri v. Flaherty*, 115 F. Supp. 739 (1953).

This section not applicable to claims filed under authority of § 32-950.23. *South Carolina Mental Health Comm. v. May*, *Westbrook Advance Sheets*, No. 16915, filed Sept. 30, 1954; *South Carolina Mental Health Comm. v. Smith, et al.*, *Westbrook Advance Sheets*, No. 16920, filed Oct. 28, 1954.

II. SUBSECTION (1).

B. Application of Section.

This section applies to claims for services to a decedent which were rendered without agreement that payment should be made at death or by will, and in an action to recover on an implied promise to pay for such services, no recovery may be had for services performed more than six

years prior to the death of decedent. *McConnell v. Crocker*, 217 S. C. 334, 60 S. E. (2d) 673 (1950).

VII. SUBSECTION (7).

A. General Consideration.

When statute begins to run.

In accord with 1st paragraph under this catchline in Code. See *McKinnon v. Summers*, 224 S. C. 331, 79 S. E. (2d) 146 (1953).

B. Application of Subsection.

Cancellation of forged deed.

In accord with paragraph under this catchline in Code. See *McKinnon v. Summers*, *Westbrook Advance Sheets*, *Opinion No. 16801*, filed Nov. 27, 1953.

Where the gravamen of the cause of action stated in the complaint was cancellation of deeds on the ground of forgery, such cause of action was barred by the six-year limitation in this section governing actions for relief on the ground of fraud. *McKinnon v. Summers*, 224 S. C. 331, 79 S. E. (2d) 146 (1953).

§ 10-145. Two years.

Within two years:

(1) An action for libel, slander, assault, battery or false imprisonment;
(2) An action upon a statute for a forfeiture or penalty to the State;
(3) An action at law by a motor carrier subject to chapter 13 of Title 58 for the recovery of its charges or any part thereof and such a cause of action shall for the purpose of this subdivision be deemed to accrue upon delivery or tender of delivery by the carrier; and

(4) An action at law for the recovery of overcharges against a motor carrier subject to chapter 13 of Title 58 and such a cause of action shall for the purpose of this subdivision be deemed to accrue at the time the charges are paid to the motor carrier. If a claim for the over charge has been presented in writing to the carrier within the two year period of limitation, the period shall be extended to include six months from the time notice in writing was given by the carrier to the claimant of disallowance of the claim or any part or parts thereof. The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Public Service Commission.

1942 Code § 390; 1932 Code § 390; Civ. P. '22 § 333; Civ. P. '12 § 139; Civ. P. '02 § 114; 1870 (14) § 116; 1952 (47) 2170.

Effect of amendment.—The amendment added subdivisions (3) and (4).

§ 10-150. Actions by State.

The limitations prescribed by this article shall apply to actions brought in the name of the State or for its benefit in the same manner as to actions by private parties, except that limitations against claims for charges for care, training, maintenance or treatment received by any patient or trainee from the State Hospital, any State training school or any State mental health facility shall commence to run against the State, its boards, commissions or agencies charged with the operation of the above institutions only from the last date upon which care, training, maintenance or treatment was furnished to any such patient or trainee.

1942 Code § 396; 1932 Code § 396; Civ. P. '22 § 339; Civ. P. '12 § 145; Civ. P. '02 § 119; 1870 (14) § 121; 1954 (48) 1732.

Effect of amendment.—The amendment added the word "except" and all thereafter.

Limitations in proper cases will run against the State, but such provisions must

be strictly construed in favor of the State. South Carolina Mental Health Comm. v. May, Westbrook Advance Sheets, No. 16915, filed Sept. 30, 1954.

CHAPTER 3.

PARTIES.

Article 2.

Guardians Ad Litem.

Sec.

10-231. Actions by and against infants and incompetents.

Sec.

10-236. How guardian ad litem for mentally incompetent person appointed.

10-238. Compensation of guardian ad litem of mentally incompetent or imprisoned person.

ARTICLE 1.

General Provisions.

§ 10-203. Who may be defendant.

I. GENERAL CONSIDERATION.

Section liberally construed.

In accord with 2nd paragraph under this catchline in Code. See South Carolina Elec. & Gas Co. v. Aetna Ins. Co., 114 F. Supp. 79 (1953).

The word "controversy" is used in a very broad sense, meaning the entire matter before the court. South Carolina Elec. & Gas Co. v. Aetna Ins. Co., 114 F. Supp. 79 (1953).

This section is permissive, with power to bring in a person or persons interested in the controversy subject to discretion of the court, and should be read in conjunction with section 10-219, both of which have been liberally construed for purpose of bringing before court all parties who may be necessary to a complete determination or settlement of all questions involved, but a party should not be brought in when doing so has effect of overriding repeatedly declared legal rights and revoking well-recognized procedure. Trawick v. One 1952

International Pickup, etc., ... S. C., 82 S. E. (2d) 275 (1954).

Applied in Shonnard v. South Carolina Public Service Authority, 217 S. C. 458, 60 S. E. (2d) 894 (1950).

Cited in Crofts v. Fletcher Motor Co., 219 S. C. 204, 64 S. E. (2d) 540 (1951).

II. APPLICATION OF SECTION

Plaintiff cannot be compelled to convert action in rem to one in personam.—Where plaintiff proceeded in rem in attachment against truck and owner of truck was permitted by circuit court to intervene and plaintiff required to amend complaint, court was correct in permitting owner to intervene but in error in requiring amendment of complaint, owner having interest in controversy adverse to plaintiff and privilege to set up rights to attached truck, but plaintiff had legal right to proceed in rem only and cannot be compelled to allege cause of action in personam. Trawick v. One 1952 International Pickup, etc., ... S. C., 82 S. E. (2d) 275 (1954).

§ 10-204. When parties united in interest.

Cited in Crofts v. Fletcher Motor Co., 219 S. C. 204, 64 S. E. (2d) 540 (1951).

§ 10-205. One or more may sue or defend for all.

I. GENERAL CONSIDERATION.

Cited in Crofts v. Fletcher Motor Co., 219 S. C. 204, 64 S. E. (2d) 540 (1951).

§ 10-207. Party in interest to sue; action on by grantee of land held adversely.

I. GENERAL CONSIDERATION.

Ordinarily, a plaintiff must be a real party in interest. *Johnson v. Abney Mills*, 219 S. C. 231, 64 S. E. (2d) 641 (1951).

Applied in *Jeff Hunt Machinery Co. v. South Carolina State Highway Dept.*, 217 S. C. 423, 60 S. E. (2d) 859 (1950).

§ 10-209. Survival of right of action.

The measure of damages under this section is for conscious pain and suffering. *Folk v. United States*, 102 F. Supp. 736 (1952).

Stated in *Dubuque Fire & Marine Ins.*

Co. v. Wilson, 213 F. (2d) 115 (1954).

Applied in *United States v. Folk*, 199 F. (2d) 889 (1952).

Cited in *American Casualty Co. v. Howard*, 187 F. (2d) 322 (1951).

§ 10-214. Foreign corporations as defendants.

Cited in dissenting opinion *Stukes, A. J.*, in *Foster, Admx. v. Rulane Gas Co.*, West-

brook Advance Sheets, No. 16922, filed Nov. 1, 1954.

§ 10-219. New parties; interpleader.

I. NEW PARTIES.

A. General Consideration.

This section has been liberally construed.

Generally, the practice statutes are liberally construed to authorize courts to bring before them all persons necessary to a complete determination of the matters involved and to the granting of appropriate relief to the end that substantial justice may be done. *Brown v. Quinn*, 220 S. C. 426, 68 S. E. (2d) 326 (1951).

This section has been liberally construed, etc.—In accord with paragraph under this catchline in Code. See *Trawick v. One 1952 International Pickup, etc.*, — S. C. —, 82 S. E. (2d) 275 (1954).

B. Application of Section.

Additional parties brought in for purposes of defendant's counterclaim and cross action.—In an action arising out of a collision between plaintiff's automobile, which was being operated by him as a taxicab, and defendant's automobile, the lower court properly passed an order making plaintiff's liability insurance carrier and plaintiff's taxicab parties defendant, so that the defendant could file a counterclaim and cross complaint or cross action against the added defendants. *Brown v. Quinn*, 220 S. C. 426, 68 S. E. (2d) 326 (1951).

In an action against a governmental agency to recover just compensation for the alleged "taking" of property damaged by the diversion of water from a river, reason enough existed for the impleading of subsequent grantees of the property in the consideration that otherwise they might thereafter sue the agency for the same "taking" of the property which, according to the allegations of the complaint, arose from continuing injuries to it. *Shonnard v. South Carolina Public Service Authority*, 217 S. C. 458, 60 S. E. (2d) 894 (1950).

Plaintiff cannot be compelled to convert action in rem to one in personam.—Where plaintiff proceeded in rem in attachment against truck and owner of truck was permitted by circuit court to intervene and plaintiff required to amend complaint, court was correct in permitting owner to intervene but in error in requiring amendment of complaint, owner having interest in controversy adverse to plaintiff and privilege to set up rights to attached truck, but plaintiff had legal right to proceed in rem only and cannot be compelled to allege cause of action in personam. *Trawick v. One 1952 International Pickup, etc.*, — S. C. —, 82 S. E. (2d) 275 (1954).

ARTICLE 2.

Guardians Ad Litem.

§ 10-231. Actions by and against infants and incompetents.

When an infant or mentally incompetent person, whether hospitalized or not, is a party he must appear by guardian ad litem who, in the case of an infant, may be appointed by the court in which the action is prosecuted, a judge of probate, a clerk of court or a master in whose counties in which the office of master exists. When an infant or mentally incompetent person is a party in a proceeding before the Industrial Commission a guardian ad litem for such infant or mentally incompetent person may be appointed by a judge of probate, clerk of court or master, if there be a master, of the county wherein such infant or mentally incompetent person resides or by any circuit judge in this State.

1942 Code § 401; 1932 Code § 401; Civ. P. '22 § 358; Civ. P. '12 § 164; Civ. P. '02 § 136; 1870 (14) § 138; 1879 (17) § 32; 1898 (22) § 688; 1946 (44) § 1517; 1952 (47) § 2042.

Effect of amendment.—A. & J. R. 1952 (47) 2042 did not expressly amend this section. But it did expressly amend §§ 10-236 and 10-238 and it is believed that in so doing it, in effect, amended § 10-231 to make it read as above. The changes are in the substitution of the phrase "mentally incompetent person" for the old phrase

"incompetent or insane person" and in the elimination of such persons from the provisions of the first sentence relating to appointment of guardians ad litem. See § 10-236, as amended, for the appointment of guardians ad litem for mentally incompetent persons.

§ 10-236. How guardian ad litem for mentally incompetent person appointed.

When a mentally incompetent person is a plaintiff his guardian ad litem shall be appointed upon application made by his committee or by a relative or friend and, if by a relative or friend, notice thereof must first be given to his committee or, if he has no committee; to the person with whom he resides. When the incompetent person is a defendant his guardian ad litem shall be appointed upon application made by his committee, if he has a committee and if the committee applies within twenty days after the service of summons, or, if his committee neglects or fails to apply within that time or if he has no committee, by a relative or friend or any other party to the action. If application is made by a relative or friend or other party to the action, notice thereof must first be given to the committee or if there is no committee, to the person with whom the incompetent person resides. The application shall be made to, and the appointment shall be made by, (1) the court in which the action is prosecuted, (2) a judge, the clerk or the master thereof or (3) by the probate judge of the court of probate of the county in which the incompetent person resides or for the county in which the action is prosecuted. An attorney or other competent person shall be appointed to act as guardian ad litem for the incompetent person. If the incompetent person resides out of the State or is temporarily absent therefrom, a guardian ad litem may be appointed by an order nisi, an accordance with the practice relating to infants as set forth in § 10-235. All such appointments heretofore made are hereby validated and confirmed.

1942 Code § 409-1; 1937 (40) § 47; 1940 (41) § 1828; 1952 (47) § 2042.

Effect of amendment.—The amendment sane person" to "mentally incompetent merely changed the references from "in-

§ 10-238. Compensation of guardian ad litem of mentally incompetent or imprisoned person.

The guardian ad litem of a mentally incompetent or imprisoned person appointed under the provisions of § 10-236 or § 10-237 shall receive out of the property of such mentally incompetent or imprisoned person a reasonable compensation for the service rendered in such person's behalf.

1942 Code §§ 409-1, 409-2; 1937 (40) § 47; 1940 (41) § 1828, 1833; 1952 (47) § 2042.

Effect of amendment.—The amendment merely changed "insane person" to "mentally incompetent person".

CHAPTER 4.

VENUE.

Sec.

10-303.11. Actions against State agencies and State officials; exceptions.

§ 10-301. Actions to be tried where subject matter situated.

Cross reference.—§ 3-187.73 requires jurisdiction in any county in which their sellers of economic poisons to agree to economic poisons or insecticides are used.

§ 10-302. Actions to be tried where cause of action arose.

II. SUBSECTION (2).

Suits against the State Board of Fisheries to require reinstatement of plaintiffs as county inspectors for the Board, and to

require payment of their salaries, must be tried in the counties in which the causes of action arose. The court of common pleas for Jasper County had no jurisdic-

tion of such suits brought by inspectors of other counties, and the failure of the defendants to move for change of venue

was immaterial. *Langford v. State Board of Fisheries*, 217 S. C. 118, 60 S. E. (2d) 59 (1950).

§ 10-303. Actions to be tried in county where defendant resides.

Cross reference.—As to actions against certain State agencies and State officials, see § 10-303.11.

I. GENERAL CONSIDERATION.

The right of a defendant to have a case against him tried in the county in which he resides, etc.

In accord with 1st paragraph under this catchline in Code. See *Moody v. Burns*, 222 S. C. 258, 72 S. E. (2d) 189 (1952), also *Warren v. Padgett*, — S. C. —, 82 S. E. (2d) 810 (1954).

In accord with 3rd paragraph under this catchline in Code. See *Wood v. Lea*, 219 S. C. 409, 65 S. E. (2d) 669 (1951).

The right of a resident defendant to a trial in the county of his residence has been aptly described as a substantial and valuable right, and subject to defeat only when the requirements of the statute permitting such change have met with compliance. *Wingard v. Sims*, 222 S. C. 396, 73 S. E. (2d) 279 (1952).

The right of a resident to be sued in his own county has long been held to be a valuable one. *Fordham v. Fordham*, 223 S. C. 401, 76 S. E. (2d) 299 (1953).

Co-defendant must be a material and bona fide defendant.

In accord with 1st paragraph under this catchline in Code. See *Wood v. Lea*, 219 S. C. 409, 65 S. E. (2d) 669 (1951).

In accord with 2nd paragraph under this catchline in Code. See *Moody v. Burns*, 222 S. C. 258, 72 S. E. (2d) 189 (1952), also *Warren v. Padgett*, — S. C. —, 82 S. E. (2d) 810 (1954).

The driver of the third car involved in an automobile collision was not a material defendant in an action for wrongful death arising out of the collision where the evidence showed that any negligence of the driver of the third car was not the proximate cause of the collision. *Moody v. Burns*, 222 S. C. 258, 72 S. E. (2d) 189 (1952).

In action brought against a manufacturer and a retailer of a soft drink residing in different counties, in passing upon motion of manufacturer for change of venue on ground that retailer was not a material and bona fide defendant, lower court sits as judge and jury and may go beyond the pleadings to determine the issue. A defendant may be mala fide, so as to require the granting of the motion even though the allegations (and proof apparently available) may be sufficient to submit the case to the jury; and so whether or not a cause of action is stated in the complaint is not always controlling. *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

In action brought against a manufacturer and a retailer of a soft drink residing in different counties, on motion of manufacturer for change of venue, showing supported finding of lower court, sitting as judge of the law and of the facts, that defendant retailer was a bona fide defendant against whom a cause of action was stated. *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

Findings by hearing judge on motion to change venue will not be disturbed by Supreme Court unless they appear manifestly wrong. *Warren v. Padgett*, — S. C. —, 82 S. E. (2d) 810 (1954).

Ability or inability of defendant to respond to monetary judgment has no bearing upon venue of a case except that it may be considered by hearing judge in determining question of whether or not such defendant is a bona fide or mala fide defendant. *Warren v. Padgett*, — S. C. —, 82 S. E. (2d) 810 (1954).

In action under Pure Food law preferable to join both manufacturer and retailer.—Where two defendants who reside in different counties are sued jointly, the statute provides that the case may be tried in either of the two counties. Where an action involves both the manufacturer and the retailer under the Pure Food and Drug Laws, (Sec. 32-1451 et seq.), it is not only proper but preferable to join both defendants in the same complaint in order to prevent a multiplicity of actions. *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

This section applies alike to actions and special proceedings, in the absence of specific provision for a special proceeding, such as is applicable to mandamus under § 10-2103. *Fordham v. Fordham* (S. C.), 76 S. E. (2d) 299 (1953).

It is applicable to a proceeding by a wife against her husband to enforce support of their children. *Fordham v. Fordham* (S. C.), 76 S. E. (2d) 299 (1953).

Special law governing situation where this section is applicable held unconstitutional—See note to § 15-1233.

Applied in *Webb v. Southern Ry. Co.*, 221 S. C. 450, 71 S. E. (2d) 12 (1952); *King v. Moore*, 224 S. C. 400, 79 S. E. (2d) 460 (1953).

Stated in *Thomas v. Thomas*, 218 S. C. 235, 62 S. E. (2d) 307 (1950), con. op. of Oxner, J.

Cited in *Reynolds v. Atlantic Coast Line R. Co.*, 217 S. C. 16, 59 S. E. (2d) 344 (1950), dis. op. of Oxner, J.

II. ACTIONS AGAINST CORPORATIONS.

Venue properly transferred to county of corporation's residence.—Where action was commenced against a domestic corporation in a county where it owned no property and had no agent, although the corporation did transact business in such

county in that it delivered bakery products to customers there by means of a truck operated by its agent or employee, venue was properly transferred to the county of the corporation's residence. *Brown v. Palmetto Baking Co.*, 220 S. C. 38, 66 S. E. (2d) 417 (1951).

§ 10-303.11. Actions against State agencies and State officials; exceptions.

The circuit court may hear and determine all questions, actions and controversies, other than those involving rates of public service companies for which specific procedures for review are provided in Title 58, affecting State boards, commissions and agencies and State officials in their official capacities in the circuit where such question, action or controversy shall arise.

1954 (48) 1541.

Cross reference.—As to fixed venue in action against public official, see § 10-302.

§ 10-304. Suits against certain fiduciaries.

Where an action was brought against a defendant individually and in his capacity as executor, but the complaint stated no cause of action against the defendant in his capacity as executor, the defendant in his capacity as executor was not a ma-

terial and bona fide defendant, and a motion for a change of venue from the county where defendant qualified as executor to the county of his residence should have been granted. *Wood v. Lea*, 219 S. C. 409, 65 S. E. (2d) 669 (1951).

§ 10-307. Suits against insurance companies.

This section clearly authorizes the trial of an action against an insurance company in the county where the loss occurs even though the insurance company

has no office or agent in such county. *Padgett v. Calvert Fire Ins. Co.*, 221 S. C. 166, 69 S. E. (2d) 565 (1952).

§ 10-310. Changing place of trial.

I. GENERAL CONSIDERATION.

Section limits right to trial where defendant resides.

Defendant in an action for personal injuries has a right to be sued in the county of his residence, but that right is subject to the right of plaintiff to have the place of trial changed to another county, if both the convenience of the witnesses and the ends of justice will be promoted thereby. *Stanton v. Sims*, 223 S. C. 109, 74 S. E. (2d) 693 (1953).

State court may change place of trial of action under **Federal Employers' Liability Act**. *Smith v. Atlantic Coast Line R. Co.*, 218 S. C. 481, 63 S. E. (2d) 311 (1951).

Applied in *Padgett v. Calvert Fire Ins. Co.*, 221 S. C. 166, 69 S. E. (2d) 565 (1952).

Cited in *Leppard v. Jordan's Truck Line*, 110 F. Supp. 811 (1953).

II. SUBSECTION (1).

Answer in an action does not constitute waiver of the right to move to transfer the case to the proper county for trial. *Brown v. Palmetto Baking Co.*, 220 S. C. 38, 66 S. E. (2d) 417 (1951).

Effect of failure to make motion for change of venue.—In an action against a public officer, which was not brought in the county where the cause of action arose as required by § 10-302, defendant could take the position that the trial court was

without jurisdiction, notwithstanding his failure to make any motion for a change of venue to the proper county, since the question of jurisdiction of the subject matter may even be raised for the first time upon appeal. *Langford v. State Board of Fisheries*, 217 S. C. 118, 60 S. E. (2d) 59 (1950).

Cited in *Brown v. Palmetto Baking Co.*, 221 S. C. 183, 69 S. E. (2d) 598 (1952).

IV. SUBSECTION (3).

Burden of proof under subsection (3).

In accord with paragraph under this catchline in Code. See *Patterson v. Charleston, etc., Ry. Co.*, 190 S. C. 66, 1 S. E. (2d) 920 (1939); *Reynolds v. Atlantic Coast Line R. Co.*, 217 S. C. 16, 59 S. E. (2d) 344 (1950); *Smith v. Atlantic Coast Line R. Co.*, 218 S. C. 481, 63 S. E. (2d) 311 (1951); *Webb v. Southern Ry. Co.*, 221 S. C. 450, 71 S. E. (2d) 12 (1952); *Haigler v. Westbury*, 223 S. C. 517, 77 S. E. (2d) 207 (1953).

The burden of showing manifest error, which amounts to an abuse of judicial discretion, is upon the appellant. *Wallace v. Dickerson Const. Co.*, 224 S. C. 396, 79 S. E. (2d) 371, (1953).

Change of venue for convenience of witnesses and promotion of justice is discretionary, etc.

In accord with 1st paragraph under this catchline in Code. See *Reynolds v. At-*

Atlantic Coast Line R. Co., 217 S. C. 16, 59 S. E. (2d) 344 (1950); *Smith v. Atlantic Coast Line R. Co.*, 218 S. C. 481, 63 S. E. (2d) 311 (1951); *Thompson v. S. C. State Highway Dept.*, 221 S. C. 250, 70 S. E. (2d) 241 (1952); *Becker v. Uhe*, 221 S. C. 334, 70 S. E. (2d) 346 (1952); *Webb v. Southern Ry. Co.*, 221 S. C. 450, 71 S. E. (2d) 12 (1952); *Wingard v. Sims*, 222 S. C. 396, 73 S. E. (2d) 279 (1952); *Wilson v. Southern Furniture Co.*, 224 S. C. 281, 78 S. E. (2d) 890 (1953); *Wallace v. Dickerson Const. Co.*, 224 S. C. 396, 79 S. E. (2d) 371 (1953).

In accord with 4th paragraph under this catchline in Code. See *Wilson v. Southern Furniture Co.*, 224 S. C. 281, 78 S. E. (2d) 890 (1953).

"Judicial discretion" as applied to the determination of a motion of this kind is an elastic, relative term, and implies the absence of a hard and fast rule. *Wingard v. Sims*, 222 S. C. 396, 73 S. E. (2d) 279 (1952).

Where, as in this case, the facts are not in dispute, and it clearly appears that both the convenience of witnesses and the ends of justice would be promoted by changing the place of trial, it becomes the duty of the Supreme Court to reverse the lower court and order that the place of trial be changed. *Reynolds v. Atlantic Coast Line R. Co.*, 217 S. C. 16, 59 S. E. (2d) 344 (1950).

For cases holding that the court below committed manifest legal error in refusing to change the venue on the ground of convenience of witnesses, see *Smith v. Atlantic Coast Line R. Co.*, 218 S. C.

481, 63 S. E. (2d) 311 (1951); *Becker v. Uhe*, 221 S. C. 334, 70 S. E. (2d) 346 (1952).

For case holding that the court below erred as a matter of law in granting the motion, see *Webb v. Southern Ry. Co.*, 221 S. C. 450, 71 S. E. (2d) 12 (1952).

For cases holding that refusal of the motion did not constitute a manifest abuse of discretion, see *Thompson v. S. C. State Highway Dept.*, 221 S. C. 250, 70 S. E. (2d) 241 (1952); *Wingard v. Sims*, 222 S. C. 396, 73 S. E. (2d) 279 (1952); *Wilson v. Southern Furniture Co.*, 224 S. C. 281, 78 S. E. (2d) 890 (1953).

But both convenience of witnesses and promotion of ends of justice must appear together.

In accord with 1st paragraph under this catchline in Code. See *Webb v. Southern Ry. Co.*, 221 S. C. 450, 71 S. E. (2d) 12 (1952).

Failure to establish to the satisfaction of the court either that a change of venue would serve the convenience of witnesses or that it would promote the ends of justice would suffice for refusal of the motion. *Wilson v. Southern Furniture Co.*, 224 S. C. 281, 78 S. E. (2d) 890 (1953).

Dismissal of an action without prejudice upon plaintiff's motion made in order to allow him to bring the action in another county for the convenience of his witnesses does not preclude defendant, in a subsequent suit, from resorting to the provisions of subsection (3) of this section. *Brown v. Palmetto Baking Co.*, 221 S. C. 183, 69 S. E. (2d) 598 (1952).

§ 10-311. Same; procedure when fair and impartial trial cannot be had in county.

Review lies only where discretion is abused.—In absence of showing, as here, of abuse of discretion by trial judge in refusing to grant motion for change of venue on ground that defendant could not obtain fair and impartial trial, Supreme Court will not

interfere with ruling. *State v. Fuller*, *Westbrook Advance Sheets*, No. 16899, filed Aug. 4, 1954.

Cited in *Employers Mut. Liability Ins. Co. v. Hendrix*, 199 F. (2d) 53 (1952).

CHAPTER 5.

SUMMONSES, ORDERS OF PUBLICATION AND SERVICE OF PAPERS GENERALLY.

Article 2.

Personal Service in State.

Sec.

10-436. Service on persons confined.

Sec.

10-436.1. Service of legal papers upon patients in State mental health facility.

10-437. [Repealed.]

ARTICLE 1.

Summons Generally.

§ 10-409. Amendment of process or proof of service.

Applied in *Corley v. Wells*, 224 S. C. 198, 78 S. E. (2d) 186 (1953).

ARTICLE 2.

*Personal Service in State.***§ 10-421. How summons served on corporations generally.****I. DOMESTIC CORPORATIONS.**

Corporation must be sued in county of residence, unless it owns property, and transacts business in another county.—*Atkinson v. Korn Industries*, 219 S. C. 402, 65 S. E. (2d) 465 (1951).

The phrase "transact business" is one of rather wide latitude. It is generally held that for a corporation to transact business within the meaning of such a statute, the business transacted by it in the county must be a part of its usual or ordinary business and must be continuous in the sense of being distinguishable from mere casual, occasional, or isolated transactions. However, no all-embracing rule can be laid down as to when a corporation transacts sufficient of its business within a county to bring it within the statute. *Atkinson v. Korn Industries*, 219 S. C. 402, 65 S. E. (2d) 465 (1951).

Logging operations of manufacturing company held to constitute transaction of business in county where it owned timber. *Atkinson v. Korn Industries*, 219 S. C. 402, 65 S. E. (2d) 465 (1951).

Transaction of business alone is insufficient.—Where a domestic corporation transacted business in the county in which suit was brought, but owned no property and had no agent there, it was entitled to have the action transferred to the county of its residence. *Brown v. Palmetto Baking Co.*, 220 S. C. 38, 66 S. E. (2d) 417 (1951).

The requirement of ownership of property is not met by ownership of the truck by which the corporation's wares are peddled or delivered from another county. *Brown v. Palmetto Baking Co.*, 220 S. C. 38, 66 S. E. (2d) 417 (1951).

§ 10-424. Service on foreign corporations generally.

Resident of this State cannot obtain jurisdiction in this State of foreign corporation previously domesticated in this State, upon a cause of action arising in another state and not connected with any business activities in this State of the foreign corporation, by service of summons and complaint upon Secretary of State of this State, after foreign corporation had withdrawn from this State. *Foster*,

Admx. v. Rulane Gas Co., Westbrook Advance Sheets, No. 16922, filed Nov. 1, 1954.

This and §§ 12-721 and 12-722, which constituted a single section in 1942 Code (§ 7765), must be construed together. *Foster, Admx. v. Rulane Gas Co.*, Westbrook Advance Sheets, No. 16922, filed Nov. 1, 1954, concurring opinion Legge, A. J.

§ 10-431. Service on nonresident automobile drivers.

Applied in *Macri v. Flaherty*, 115 F. Supp. 739 (1953).

§ 10-432.1. Service on nonresident directors.

Constitutionality.—Where a state has an interest in regulating operations and transactions by nonresidents, it has power to enact appropriate legislation for the bringing of a nonresident into its forum in actions affecting his transactions in that state, and this section, being neither an arbitrary

nor unreasonable attempt to exercise the authority vested in it in the public interest, is not constitutionally objectionable as denying due process. *Wagenberg v. Charleston Wood Products*, 122 F. Supp. 745 (1954).

§ 10-433. Service on nonresident individual fiduciaries.

Citizenship and residence of administrator governs.

In accord with paragraph under this

catchline in Code. See *Mason v. Helms*, 97 F. Supp. 312 (1951).

§ 10-436. Service on persons confined.

If the suit be against a person imprisoned in this State or a patient in a State Hospital or in any other similar place in or out of this State the summonses shall be served by delivering a copy thereof to the defendant personally. Such service shall be made by the sheriff of the county in which the person shall be imprisoned or confined or, in the case of persons imprisoned in the penitentiary and patients in a State Hospital or similar institution, by the superintendent of the institution or an assistant duly designated by such superintendent instead of the sheriff. But no person who makes such service, other than the sheriff, shall be entitled to any fee

therefor. In the event that the superintendent of the institution shall designate an assistant to make such personal service of process, the superintendent shall sign a certificate reciting that such assistant has been designated by him for the purpose of making service of such process.

1942 Code § 434; 1932 Code § 434; Civ. P. '22 § 390; Civ. P. '12 § 184; Civ. P. '02 § 155; 1870 (14) § 157; 1873 (15) 497; 1882 (18) 256; 1883 (18) 437; 1887 (19) 835; 1892 (21) 404; 1899 (23) 42; 1927 (35) 292; 1940 (41) 1831; 1941 (42) 275; 1949 (46) 388; 1952 (47) 2042.

Effect of amendment.—The amendment confined in the State Hospital as “a lunatic” merely eliminated a reference to a person.

§ 10-436.1. Service of legal papers upon patients in State mental health facility.

The superintendent of a State mental health facility shall not accept service of legal papers, nor consent to the appointment of a guardian ad litem, for any patient or trainee. When a legal paper is served on a patient or trainee in any hospital, clinic, training school or other institution maintained by the State for the care, treatment or training of persons who are mentally ill, mentally defective, epileptic, senile, drug addicted or alcoholic, a copy thereof shall be filed with the superintendent who shall cause it to be made a part of the permanent record of the person. The superintendent shall immediately, in writing, inform the court out of which the process issued of the date of service of the process, the procedure under which the patient or trainee was admitted to the institution, and the present mental and physical condition of the person.

1952 (47) 2042.

§ 10-437. Service of legal papers upon patients in State Hospital.

Repeal by A. & J. R. 1952 (47) 2042.

Cross reference.—See now § 10-436.1.

ARTICLE 3.

Service by Publication or Out of State.

§ 10-451. When service by publication may be had.

I. GENERAL CONSIDERATION.

Plaintiff must prove defendant left State for purpose of avoiding service.—Having invoked subsection (2) of this section as authority for serving defendant in another state, the burden was on plaintiff to estab-

lish that defendant had departed from South Carolina for the purpose of avoiding the service of a summons in the action. King v. Moore, 224 S. C. 400, 79 S. E. (2d) 460 (1953).

§ 10-455. Effect of personal service out of State.

Section applies only where service by publication is authorized.—This section authorizes personal service outside of the State only as the “equivalent” of publication and mailing. The applicability of this section is limited to those cases in which service by publication is elsewhere author-

ized by law. King v. Moore, Westbrook Advance Sheets, Opinion No. 16811, filed Dec. 28, 1953.

Personal service in Maryland on a resident of that state would be invalid, regardless of South Carolina law. King v. Moore, 224 S. C. 400, 79 S. E. (2d) 460 (1953).

CHAPTER 6.

NOTICE OF LIS PENDENS.

§ 10-501. When filed.

Complaint claiming equitable lien states claim which affects title to real property.—A complaint, alleging claims for damages and for an accounting, and that the plaintiff has and claims an equitable lien in certain described property by reason of the defendant having purchased said

real estate with funds he held in trust for the plaintiff, and that building materials belonging to the plaintiff have gone into the improvements thereon, states a claim which affects the title to real property within the meaning of this section. Finley v. Hughes, 106 F. Supp. 355 (1952).

CHAPTER 7.

PLEADINGS.

Article 1.

General Provisions.

Sec.

10-610. Supplemental complaint, answer and reply.

ARTICLE 1.

General Provisions.

§ 10-602. Pleadings to be liberally construed.

Regardless of the denomination of a catchline in Code. See *Carolina Life Ins. Co. v. Bank of Greenwood*, 217 S. C. 277, 60 S. E. (2d) 599 (1950).

In accord with paragraph under this

§ 10-610. Supplemental complaint, answer and reply.

The plaintiff and defendant, respectively, may be allowed on motion to make a supplemental complaint, answer or reply alleging facts material to the case occurring after the former complaint, answer or reply or of which the party was ignorant when his former pleading was made and either party may, by leave of the court, in any pending or future action set up by a supplemental pleading the judgment or decree of any court of competent jurisdiction rendered since the commencement of the action, determining the matters in controversy in the action or any part thereof. If such judgment be set up by the plaintiff, the same shall be without prejudice to any provisional remedy theretofore issued or other proceedings had in the action on his behalf.

1942 Code § 498; 1932 Code § 498; Civ. P. '22 § 440; Civ. P. '12 § 228; Civ. P. '02 § 198; 1870 (14) § 200; 1953 (48) 287.

Effect of amendment.—The amendment inserted the word "or" before the phrase "of which the party was ignorant."

Cited in *Vernon v. Atlantic Coast Line R. Co.*, 218 S. C. 402, 63 S. E. (2d) 53 (1951).

ARTICLE 3.

Demurrer or Answer.

§ 10-642. When the defendant may demur.

VI. DEMURRER WHEN FACTS IN COMPLAINT INSUFFICIENT TO CONSTITUTE CAUSE OF ACTION.

Or where plaintiff is entitled to relief

thereunder.—In accord with paragraph under this catchline in Code. See *Thomas & Howard Co. v. Fowler*, --- S. C. ---, 82 S. E. (2d) 454 (1954).

§ 10-643. What demurrer to specify.

Effect of demurrer to whole complaint.—If the defendant elects to demur to the whole complaint, and not to the causes of action separately, the judge is not required in passing on the demurrer to go beyond the allegations of the first cause of action, if he finds them sufficient to entitle plaintiff to relief.

Wolfe v. Herlihy, 218 S. C. 90, 61 S. E. (2d) 764 (1950).

Demurrer must be to entire cause of action, and not to part of cause of action or defense.

In accord with this catchline in Code. See *Thomas & Howard Co. v. Fowler*, --- S. C. ---, 82 S. E. (2d) 454 (1954).

§ 10-648. Reliance on jurisdictional objection; effect of subsequent pleading.

Applied in *Jenkins v. McCarey*, 222 S. C. 426, 73 S. E. (2d) 446 (1952).

ARTICLE 4.

Subsequent Pleadings.

§ 10-661. Reply and demurrer to answer.

Counterclaim not subject to demurrer if it contains any allegations entitling party to relief, and the same rule applies to an answer. *Thomas & Howard Co. v. Fowler*, --- S. C. ---, 82 S. E. (2d) 454 (1954).

A demurrer which goes only to a portion of one of the defenses is properly overruled. *Bryant v. Bryant*, 223 S. C. 489, 76 S. E. (2d) 927 (1953).

ARTICLE 6.

*Amendments and Variances.***§ 10-691. Amendments of course and after demurrer.****II. AMENDMENTS AS OF COURSE.**

The right to amend as of course under this section applies to an answer. Mack

v. Plowden, 217 S. C. 112, 60 S. E. (2d) 57 (1950).

§ 10-692. Amendment by the court.**I. GENERAL CONSIDERATION.**

Liberal construction.—This section has received a very liberal interpretation by the courts of this State. *De Loach v. Griggs*, 222 S. C. 326, 72 S. E. (2d) 647 (1952).

Liberality should be exercised with respect to the allowance of amendments. *Johnson v. Abney Mills*, 219 S. C. 231, 64 S. E. (2d) 641 (1951).

Applied in *Shonnard v. South Carolina Public Service Authority*, 217 S. C. 458, 60 S. E. (2d) 894 (1950).

II. ALLOWANCE OF AMENDMENTS.**A. Discretion of the Court.**

Amendments are within discretion of the Court.

In accord with 1st paragraph under this catchline in Code. See *Vernon v. Atlantic Coast Line R. Co.*, 218 S. C. 402, 63 S. E. (2d) 53 (1951).

But this does not give trial judge an entirely free hand.—While a motion to amend under this section is addressed to the sound discretion of the trial court, this does not give the trial judge an entirely free hand in what might be termed discretionary matters. *Mack v. Plowden*, 217 S. C. 112, 60 S. E. (2d) 57 (1950).

Where amendment is refused on legal grounds, etc.

In accord with 1st paragraph under this catchline in Code. See *Smith v. Traxler*, 224 S. C. 290, 78 S. E. (2d) 630 (1953).

B. Amendments before Trial.

And cause may be changed or new cause raised by amendment, etc.

In accord with 1st paragraph under this catchline in Code. See *Vernon v. Atlantic Coast Line R. Co.*, 218 S. C. 402, 63 S. E. (2d) 53 (1951).

Our decisions are, almost without exception, in accord with the modern theory of code pleading which permits amendments before trial, introducing a new cause of action or substantially changing the cause of action alleged. *De Loach v. Griggs*, 222 S. C. 326, 72 S. E. (2d) 647 (1952).

The court will, as a matter of course, allow any party to shape his own pleadings to suit himself, and, for this purpose, will permit him at any time before trial to amend his pleadings so as to present his own views on the question to be litigated, upon such terms as may be deemed equitable. There is no restriction on the power of the court to allow such amendments, even though their ef-

fect be to change entirely the whole cause of action, or the grounds of defense. *Vernon v. Atlantic Coast Line R. Co.*, 218 S. C. 402, 63 S. E. (2d) 53 (1951).

But litigant may not set up new cause of action which is barred by statute of limitations.—The power of the court to allow amendments is subject to recognized limitations, among which is the rule that a litigant may not set up by amendment a wholly different cause of action—one which does not arise out of or connect itself in a material aspect with the transaction set out in the original complaint—when the cause of action attempted to be set up by the amendment is barred by the statute of limitations. *De Loach v. Griggs*, 222 S. C. 326, 72 S. E. (2d) 647 (1952).

An order requiring defendant to make his answer more definite and certain was not a limitation upon his right to set up additional defenses in his amended answer. *Mack v. Plowden*, 217 S. C. 112, 60 S. E. (2d) 57 (1950).

III. ILLUSTRATIONS.**B. Amendment Not Substantially Changing Claim or Defense.**

Pleading wrongful death statute of another State.—In an action brought in this State for the wrongful death of plaintiff's intestate in an automobile collision in North Carolina, plaintiff should have been allowed to amend her complaint so as to plead the North Carolina law governing actions for wrongful death, even though the statute of limitations on such actions had run at the time the motion to amend was made, where the complaint alleged that the death occurred in North Carolina, and the motion to amend was made before trial. *De Loach v. Griggs*, 222 S. C. 326, 72 S. E. (2d) 647 (1952) distinguishing *Sellers v. Lewis & Holmes Motor Freight Corp.*, 215 S. C. 256, 54 S. E. (2d) 806 (1949).

Alleging additional elements of damages.—Plaintiff in an action for property damage and personal injuries was properly allowed to amend his complaint by alleging additional elements of damage by way of medical expenses and loss of consortium, claimed by him as a result of the personal injuries suffered by his wife in the same accident, and by increasing his demand for judgment from \$10,000.00 to \$100,000.00. *Vernon v. Atlantic Coast Line R. Co.*, 218 S. C. 402, 63 S. E. (2d) 53 (1951).

CHAPTER 8.

JOINDER OF CAUSES; COUNTERCLAIM AND SET-OFF; CROSS CLAIMS.

§ 10-701. What causes of action may be joined.

I. GENERAL CONSIDERATION.

Cited in *Ayers v. Guess*, 217 S. C. 233, 60 S. E. (2d) 315 (1950).

II. CAUSES OF ACTION WHICH MAY BE JOINED.

A. Subdivision (1).

Section is liberally construed.

This section has been given very liberal interpretation by the courts of the State. *South Carolina Elec. & Gas Co. v. Aetna Ins. Co.*, 114 F. Supp. 79 (1953).

An action against thirty-eight insurance companies to recover for a fire loss allegedly covered by thirty-eight policies,

one issued by each of the defendants, where the provisions of each policy are substantially identical and each policy provides for pro rata liability, relates to the same subject matter, and to the same transaction, and the policies are so intertwined and dependent that the alleged breach constitutes one indivisible wrong for which complete relief can be had only in one action against all thirty-eight defendants. *South Carolina Elec. & Gas Co. v. Aetna Ins. Co.*, 114 F. Supp. 79 (1953).

§ 10-702. Joinder of principal and surety.

Plaintiff's insurer may be joined for purposes of counterclaim and cross action.—An injured party defendant has a right to bring into the action as new parties plaintiff's automobile, by which defendant allegedly was injured, and the carrier of insurance on such automobile,

which was operated as a taxicab and insured as required by law, so that he may file a counterclaim and cross action against the added defendants. *Brown v. Quinn*, 220 S. C. 426, 68 S. E. (2d) 326 (1951).

Cited in *Leppard v. Jordan's Truck Line*, 110 F. Supp. 811 (1953).

§ 10-707. Cross actions between codefendants.

It is not the purpose of a cross action or a cross complaint to introduce new matters which are outside the original controversy. This is not permitted. The relief sought must in general relate to or depend upon the contract or transaction on which the action is brought. *Brown v. Quinn*, 220 S. C. 426, 68 S. E. (2d) 326 (1951).

Bringing in new parties defendant for purposes of cross action.—An injured

party defendant has a right to bring into the action as new parties plaintiff's automobile, by which defendant allegedly was injured, and the carrier of insurance on such automobile, which was operated as a taxicab and insured as required by law, so that he may file a counterclaim and cross action against the added defendants. *Brown v. Quinn*, 220 S. C. 426, 68 S. E. (2d) 326 (1951).

CHAPTER 9.

ARREST AND BAIL IN CIVIL ACTIONS.

ARTICLE 1.

*Arrest.***§ 10-802. Arrest in civil actions permitted in certain cases.**

I. GENERAL CONSIDERATION.

Statute must be strictly complied with.—

It is elementary that statutes authorizing arrest in civil actions and execution against the person must be strictly followed when invoked. *Ramantanin v. Miller*, 225 S. C. 77, 80 S. E. (2d) 925 (1954).

V. SUBDIVISION (6).

Action not within statute.—Issuance of execution against person of judgment debtor could not be made where it appeared that the action was not for injury to property and record contained no complaint otherwise complying with section 10-1705. *Ramantanin v. Miller*, 225 S. C. 77, 80 S. E. (2d) 925 (1954).

CHAPTER 10.

ATTACHMENT.

ARTICLE 1.

*Issue of Attachments.***§ 10-901. Grounds for attachment generally.****I. GENERAL CONSIDERATION.**

Remedy is statutory and strictly construed.—Attachment is an extraordinary remedy and exists only by reason of the statute providing for same, and the courts have held almost without exception that the provisions of such statutes must be strictly construed. *Glenn v. One 1946 Tudor Ford*, 222 S. C. 13, 71 S. E. (2d) 507 (1952).

Where lien not created by statute, purpose of attachment is to obtain security for a debt by securing lien on property, and when bond is filed for release of attached

property, bond is substituted for lien. *Stephenson Finance Co. v. Burgess*, — S. C. —, 82 S. E. (2d) 512 (1954).

II. NATURE OF ATTACHMENT AND WHEN ISSUED.

An action must be commenced in regular form before attachment is available.

In accord with paragraph under this catchline in Code. See *Plowden v. Mack*, 217 S. C. 226, 60 S. E. (2d) 311 (1950).

IV. PROPERTY SUBJECT TO ATTACHMENT.

Cross reference.—See note to § 10-923, analysis line II.

§ 10-908. Minimum bond required before obtaining attachment.**III. LIABILITY ON WRITTEN UNDERTAKING.**

Defendant is entitled to recover attorney's fees as proper element of damages in action on bond given in attachment, where attachment was dissolved on motion of counsel for defendant, notwithstanding plaintiff's subsequent recovery in trial on merits, keeping in mind that claim for attorney's fees does not arise out of defending main suit but rather for appearing and

successfully moving to dissolve attachment. *Knighton, et al. v. Bramlett, Westbrook Advance Sheets*, No. 16918, filed October 7, 1954.

And demand for attorney's fees need not be made at time of motion for dissolution of attachment, but may be recovered subsequently in suit on the bond for services rendered in effecting dissolution. *Knighton, et al. v. Bramlett, Westbrook Advance Sheets*, No. 16918, filed October 7, 1954.

§ 10-911. To whom attachment directed and what to require.

Applied in *Glenn v. One 1946 Tudor Ford*, 222 S. C. 13, 71 S. E. (2d) 507 (1952).

ARTICLE 2.

*Service and Subsequent Proceedings.***§ 10-921. Service and answer.**

Only an authorized officer may execute a warrant of attachment.—*Glenn v. One 1946 Tudor Ford*, 222 S. C. 13, 71 S. E. (2d) 507 (1952).

A rural policeman of York County had no authority to serve a warrant of at-

tachment directed to sheriffs and constables of the State and of York County. Such service was improper and should be set aside. *Glenn v. One 1946 Tudor Ford*, 222 S. C. 13, 71 S. E. (2d) 507 (1952).

§ 10-922. Property subject to attachment.

Cross reference.—See note to § 10-923, analysis line II.

§ 10-923. Duty of officer to whom warrant delivered.**II. PROPERTY SUBJECT TO ATTACHMENT.**

All property of debtor, legal or equitable, subject to attachment. *Charles R. Allen, Inc. v. Rhode Island Ins. Co.*, 217 S. C. 296, 60 S. E. (2d) 609 (1950).

The interest of the debtor subject to attachment includes any indebtedness owing to him by a third party. *Charles R. Allen, Inc. v. Rhode Island Ins. Co.*, 217

S. C. 296, 60 S. E. (2d) 609 (1950).

An unadjusted claim for loss under a policy of insurance is subject to attachment or garnishment in the hands of the insurance company. This is true even though the insurance company denies any indebtedness to the insured. *Charles R. Allen, Inc. v. Rhode Island Ins. Co.*, 217 S. C. 296, 60 S. E. (2d) 609 (1950).

§ 10-931. Undertaking on part of defendant.**II. BOND ON APPLICATION TO DISCHARGE ATTACHMENT.**

Bond substituted for lien.—Where lien not created by statute, purpose of attachment is to obtain security for a debt by

securing lien on property, and when bond is filed for release of attached property, bond is substituted for lien. *Stephenson Finance Co. v. Burgess*, --- S. C. ---, 82 S. E. (2d) 512 (1954).

CHAPTER 12.**ISSUES AND MODES OF TRIAL.****§ 10-1056. How issues of law and fact tried.****I. GENERAL CONSIDERATION.**

Applied in *Morris v. Lambert*, 218 S. C. 384, 62 S. E. (2d) 841 (1950).

Cited in *Center v. Vaughan*, 217 S. C. 31, 59 S. E. (2d) 491 (1950).

§ 10-1057. Issues out of chancery.

Cross reference.—See § 10-1457.

Refusal to frame issues under this section within discretion of court. *Greenwood Lumber Co. v. Cromer*, --- S. C. ---, 82 S. E. (2d) 527 (1954).

Findings on issues submitted to jury

under this section are conclusive under § 10-1457. *Greenwood Lumber Co. v. Cromer*, --- S. C. ---, 82 S. E. (2d) 527 (1954).

Cited in *Standard Warehouse Co. v. Atlantic Coast Line R. Co.*, 222 S. C. 93, 71 S. E. (2d) 893 (1952).

§ 10-1058. Issues triable by court.**I. GENERAL CONSIDERATION.**

Cited in *Standard Warehouse Co. v. At-*

lantic Coast Line R. Co., 222 S. C. 93, 71 S. E. (2d) 893 (1952).

CHAPTER 14.**TRIAL AND CERTAIN INCIDENTS THEREOF.****Article 1.****General Provisions.**

Sec.

10-1210. Court to give opportunity to ob-

ject to charge or request additional charge out of presence of jury.

ARTICLE 1.**General Provisions.****§ 10-1210. Court to give opportunity to object to charge or request additional charge out of presence of jury.**

In all cases tried before a jury, other than cases in a magistrate's or municipal court, after the court has delivered to the jury a charge on the law in the case the court shall temporarily excuse the jury from the presence of counsel and litigants in order to give counsel and litigants an opportunity to express objections to the charge or request the charge of additional propositions made necessary by the charge, out of the presence of the jury.

1953 (48) 28.

This section increases the responsibility of trial counsel as to the correctness and sufficiency of the charge to the jury. *Munn*

v. Asseff, *Westbrook Advance Sheets*, No. 16909, filed Sept. 14, 1954.

§ 10-1213. Relief from mistake, etc.; amendments.**I. GENERAL CONSIDERATION.**

And remedy provided by section is exclusive.—In accord with paragraph under this catchline in Code. See *Brock v. Brock*, --- S. C. ---, 81 S. E. (2d) 898 (1954).

Applied in *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

VII. ILLUSTRATIONS OF APPLICATION OF SECTION.**B. Grounds Insufficient for Granting Relief.**

Court below, in setting aside and vacating default divorce judgment, abused its discretion and thereby committed error of law, where showing made was insufficient to meet requirements of this section, it appearing that husband disregarded all proceedings and treated them with contempt, and nothing was done which could have misled him. *Brock v. Brock*, --- S. C. ---, 81 S. E. (2d) 898 (1954).

§ 10-1215. New trials.**I. GENERAL CONSIDERATION.**

Circuit court's power said to be inherent.

In accord with paragraph under this catchline in Code. See *Fallon v. Rucks*, 217 S. C. 180, 60 S. E. (2d) 88 (1950).

III. CORRECTION, MODIFICATION, OR INTERFERENCE WITH JURY VERDICT.

It was error to grant a new trial on the ground of objection to the verdict's form before it was amended by the jury upon resubmission by consent. *Fallon v. Rucks*, 217 S. C. 180, 60 S. E. (2d) 88 (1950).

IV. MOTION FOR NEW TRIAL.

But no specific time is provided.

In accord with paragraph under this catchline in Code. See *Smith v. Quattlebaum*, 223 S. C. 384, 76 S. E. (2d) 154 (1953).

When motion may be made after ad-

journalment sine die.—Generally, when a trial judge adjourns his court sine die, he loses jurisdiction of a case finally determined during that term, except under special circumstances. An exception to this general rule is a motion for new trial on after- or newly-discovered evidence, based upon the broad principles of the furtherance of justice. And there is no sound reason why a motion for new trial on after-discovered disqualification of a juror, alleged as such, should not be within the same category. *Smith v. Quattlebaum*, 223 S. C. 384, 76 S. E. (2d) 154 (1953).

VI. MISCELLANEOUS APPLICATIONS OF SECTION.

Denial of motion for new trial on ground of after-discovered disqualification of juror held not error. *Smith v. Quattlebaum*, 223 S. C. 384, 76 S. E. (2d) 154 (1953).

ARTICLE 2.*Motions and Orders.***§ 10-1227. Notice of motion.**

Applied, as to notice of motion to dismiss appeal, in *State v. Cottingham*, 224 S. C. 181, 77 S. E. (2d) 897 (1953).

CHAPTER 15.**LEGAL NOTICES GENERALLY.****§ 10-1304. Equivalent of publication for two weeks or fifteen days.**

This section was intended to clarify § 10-1306, relating to judicial sales of real and personal property, and does not apply to publication of notice of a hearing

on a proposed amendment to a zoning ordinance under § 47-1004. *Central Realty Corp. v. Allison*, 218 S. C. 435, 63 S. E. (2d) 153 (1951).

§ 10-1306. Length of time legal sales shall be advertised.

Cited in *Central Realty Corp. v. Allison*, 218 S. C. 435, 63 S. E. (2d) 153 (1951).

CHAPTER 16.**REFEREES AND MASTERS.****§ 10-1402. When reference may be compulsorily ordered.****IV. RELATION OF SECTION TO TRIAL BY JURY.**

Compulsory reference to determine factual issue of existence of partnership erroneous.—In an action against husband and wife individually and as partners, where the wife's answer raised a material substantial issue of fact as to the allegation that she was a member of the partnership, the matter should not have been referred to the referee to decide this is-

sue of fact and the wife was entitled to a trial by jury of the issues raised by her answer. *Nachman-Rhodes, Inc. v. Lightner*, 219 S. C. 167, 64 S. E. (2d) 393 (1951).

Compulsory reference in action to recover compensation for legal services held erroneous as depriving defendant of right to trial by jury. *De Pass v. Piedmont Interstate Fair Ass'n*, 217 S. C. 38, 59 S. E. (2d) 495 (1950).

§ 10-1403. Reference in equitable matters.

Cross reference.—As to order of reference depriving party of right to trial by

jury, see note to § 10-1402, analysis line IV.

CHAPTER 17.

VERDICTS.

§ 10-1453. When jury may render special or general verdict; directing special findings.

IX. GENERAL AND SPECIAL VERDICTS.

Special verdict is in discretion of jury in action for recovery of money only.—In an action to recover on a fire insurance policy, where there were four separate schedules of indemnity, limited in their several amounts, the court was

not bound to direct the jury to find a special verdict upon any or all of the issues. The action was for the recovery of money only and in such cases the rendition of a special verdict is within the discretion of the jury. *Eaves v. Progressive Fire Ins. Co.*, 217 S. C. 365, 60 S. E. (2d) 687 (1950).

§ 10-1457. Force of verdict on issue out of chancery.

Findings on issues submitted to jury under terms of § 10-1057 are conclusive.

Greenwood Lumber Co. v. Cromer, ... S. C., 82 S. E. (2d) 527 (1954).

§ 10-1461. Motions for new trial.

V. DISCRETION OF JUDGE.

Granting motion for new trial lies in discretion of judge.

The power of a trial judge to grant a new trial absolute or nisi in a law case upon his disapproval of the verdict on factual grounds is an essential discretion of a trial court which the Supreme Court

does not possess under the present Constitution. But the discretion is founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them, hence his sometime designation as the thirteenth juror. *Fallon v. Rucks*, 217 S. C. 180, 60 S. E. (2d) 88 (1950).

CHAPTER 18.

JUDGMENTS AND DECREES GENERALLY.

Article 2.

Judgments by Default or Confession.

Sec.

10-1532. Judgment after reference or upon evidence taken by court.

ARTICLE 2.

*Judgments by Default or Confession.***§ 10-1531. Judgment by default.**

Cross reference.—As to judgment by default where itemized account not served and complaint not verified, see § 10-1532 and note thereto.

Substantial compliance with this section is sufficient. *Jordan v. Tadlock*, 223 S. C. 326, 75 S. E. (2d) 691 (1953).

Substantial compliance with requirement of verification.—Verification to a complaint was sufficient where the creditor deposed he had read the complaint "and knows the contents thereof and that the same is true of his own knowledge," since the logical meaning and conclusion of this allegation is that the account is true and

correct, and no part of the sum sued for has been paid by discount or otherwise. *Jordan v. Tadlock*, 223 S. C. 326, 75 S. E. (2d) 691 (1953).

Where the statement of account was attached to the complaint and made a part thereof by appropriate allegation, and the complaint was verified by the creditor before a notary public, the account was sufficiently verified though no affidavit was appended thereto. *Jordan v. Tadlock*, 223 S. C. 326, 75 S. E. (2d) 691 (1953).

Applied in *Patrick v. Wolowek*, ... S. C., 81 S. E. (2d) 717 (1954).

§ 10-1532. Judgment after reference or upon evidence taken by court.

The court of common pleas may upon motion of the plaintiff refer any or all issues in any default case whether the claim, demand or cause of action be on contract or in tort, and whether the claim or demand be liquidated or unliquidated, or hear the allegations and evidence of the plaintiff in term time or at chambers and upon the evidence so taken by the court or upon hearing the report of the master and

the evidence produced before him render judgment for the plaintiff for such relief as his allegations and proof may warrant.

1942 Code § 586; 1932 Code § 586; Civ. P. '22 § 526; Civ. P. '12 § 305; Civ. P. '02 § 267; 1870 (14) § 269; 1873 (15) 502; 1882 (18) 112; 1884 (18) 709; 1889 (23) 41; 1929 (31) 25; 1939 (41) 336; 1953 (48) 137.

Effect of amendment.—The amendment inserted the phrase “whether the claim, demand or cause of action be on contract or in tort, and whether the claim or demand be liquidated or unliquidated.”

Judgment where itemized account not served and complaint not verified.—

Where, in an action on an account, no itemized, verified statement of the account was attached to or served with the summons and complaint, and the verification was so defective as to amount in law to no verification whatsoever, but, no answer or demurrer to the complaint having been served on the respondent or his counsel in response to the summons, and affidavit of default having been duly made, plaintiff appeared before the judge at his cham-

bers and testified under oath that the amount claimed was due and owing and that no part of the same had been paid by discount or otherwise, entry of judgment by default was authorized under this section. *Arthur v. Devaux*, 217 S. C. 256, 60 S. E. (2d) 590 (1950).

Court may render default judgment for tort and unliquidated damages.—Prior to amendment of 1953, Court could not grant judgment by default on cause of action sounding in tort seeking unliquidated damages without aid of jury, but this section now authorizes Court of Common Pleas to render judgments by default in actions in tort and for unliquidated damages without aid of jury. *Patrick v. Wolowek*, ... S. C. ... 81 S. E. (2d) 717 (1954).

ARTICLE 3.

Judgment Roll; Abstracts; Filing or Docketing.

§ 10-1542. Entries in abstract of judgments; index to judgments.

Editor's note.—Provision relating to renewal of judgment is obsolete.

CHAPTER 20.

EXECUTIONS AND JUDICIAL SALES GENERALLY.

ARTICLE 1.

General Provisions.

§ 10-1705. Execution against the person.

Must be strict compliance with section.—It is elementary that statutes authorizing arrest in civil actions and execution against the person must be strictly followed when invoked. *Ramantanin v. Miller*, 225 S. C. 77, 80 S. E. (2d) 925 (1954).

execution against person of judgment debtor could not be made where it appeared that the action was not for injury to property and record contained no complaint otherwise complying with this section. *Ramantanin v. Miller*, 225 S. C. 77, 80 S. E. (2d) 925 (1954).

Failure of compliance.—Issuance of exe-

ARTICLE 2.

Discovery; Arrest; Garnishment; Receivers, etc.

§ 10-1721. Order for discovery of property.

I. GENERAL CONSIDERATION.

Applied in *Fagan v. Timmons*, 217 S. C. 432, 60 S. E. (2d) 863 (1950).

§ 10-1732. Judge may appoint receiver.

All creditors need not be original parties to proceedings for the appointment of a receiver. *Fagan v. Timmons*, 217 S. C. 432, 60 S. E. (2d) 863 (1950).

United States is not necessary party though property subject to federal tax liens.—The fact that the United States, which had filed income tax liens against the debtor's property, was not a party did

not deprive the court of jurisdiction to appoint a receiver under this section to take possession of the defendant's property, collect the rents, issues and profits and hold the same subject to the tax liens and the further orders of the court. *Fagan v. Timmons*, 217 S. C. 432, 60 S. E. (2d) 863 (1950).

CHAPTER 23.

DEATH BY WRONGFUL ACT AND LYNCHING.

ARTICLE 1.

*Death by Wrongful Act.***§ 10-1951. Civil action for wrongful act causing death.****I. GENERAL CONSIDERATION.**

What law governs. — In actions for wrongful death the *lex loci* governs as to all matters that may be considered to be substantive and which create and affect the right to sue; but as to any matters that may be considered to be merely procedural the *lex fori* will govern. *Anderson v. Lane*, 97 F. Supp. 265 (1951).

Applied in *McCullem v. Liberty Life Ins. Co.*, 217 S. C. 565, 61 S. E. (2d) 181 (1950); *Conyers v. Atlantic Coast Line R. Co.*, 218 S. C. 278, 62 S. E. (2d) 478 (1950); *Jones v. Atlanta-Charlotte Air Line R. Co.*, 218 S. C. 537, 63 S. E. (2d) 476, 26 A. L. R. (2d) 297 (1951); *DuRant v. George A. Rheman Co., Inc.*, 219 S. C. 250, 64 S. E. (2d) 531 (1951); *Dawson v. South Carolina Power Co.*,

220 S. C. 26, 66 S. E. (2d) 322 (1951); *Webb v. Southern Ry. Co.*, 221 S. C. 450, 71 S. E. (2d) 12 (1952); *Williamson v. Charleston, etc., R. Co.*, 222 S. C. 455, 73 S. E. (2d) 537 (1952); *Mason v. Helms*, 97 F. Supp. 312 (1951); *Folk v. United States*, 102 F. Supp. 736 (1952); *Floe v. Plowden*, 192 F. (2d) 291 (1951); *Atlantic Coast Line R. Co. v. Glenn*, 198 F. (2d) 232 (1952); *United States v. Folk*, 199 F. (2d) 889 (1952); *Greene v. Miller*, 114 F. Supp. 150 (1953); *Miller v. Atlantic Coast Line R. Co.* — S. C. —, 81 S. E. (2d) 335 (1954).

Cited in *DeLoach v. Griggs*, 222 S. C. 326, 72 S. E. (2d) 647 (1952); *American Casualty Co. v. Howard*, 187 F. (2d) 322 (1951).

§ 10-1952. Beneficiaries of action for wrongful death.

The defendants cannot be heard to question the propriety of the appointment of the administrator who brings the action. They have no standing to question the method of administration of the estate and their sole interest in the cause is the denial of their alleged liability for negligent death under Lord Campbell's Act. *Mason v. Helms*, 97 F. Supp. 312 (1951).

The citizenship and residence of the administrator governs the matter of jurisdiction of the federal courts in actions for wrongful death. *Mason v. Helms*, 97 F. Supp. 312 (1951).

A wife who before her husband's death was living in adultery with another man was not a "widow" under the South Carolina death statute, and the right of recovery for death accrued to plaintiff's intestate's mother. *Folk v. United States*, 102 F. Supp. 736 (1952).

Procedure in action under foreign statute.

In an action brought in South Carolina for the death of a wife and mother in an automobile collision in Georgia,

the Georgia statute, which requires that in such case the surviving husband and children must sue jointly, controls, and this section, vesting the right of action in the administrator, does not apply. *Anderson v. Lane*, 97 F. Supp. 265 (1951), distinguishing *Bussey v. Charleston, etc., Ry. Co.*, 73 S. C. 215, 53 S. E. 165 (1906).

Applied in *Conyers v. Atlantic Coast Line R. Co.*, 218 S. C. 278, 62 S. E. (2d) 478 (1950); *Jones v. Atlanta-Charlotte Air Line R. Co.*, 218 S. C. 537, 63 S. E. (2d) 476, 26 A. L. R. (2d) 297 (1951); *DuRant v. George A. Rheman Co., Inc.*, 219 S. C. 250, 64 S. E. (2d) 531 (1951); *Webb v. Southern Ry. Co.*, 221 S. C. 450, 71 S. E. (2d) 12 (1952); *Williamson v. Charleston, etc., R. Co.*, 222 S. C. 455, 73 S. E. (2d) 537 (1952); *Floe v. Plowden*, 192 F. (2d) 291 (1951); *Atlantic Coast Line R. Co. v. Glenn*, 198 F. (2d) 232 (1952).

Cited in *DeLoach v. Griggs*, 222 S. C. 326, 72 S. E. (2d) 647 (1952); *American Casualty Co. v. Howard*, 187 F. (2d) 322 (1951).

§ 10-1954. Damages; amount and to whom payable.**I. DAMAGES.**

The elements of damage, etc.

Damages in a Lord Campbell's Act case consist mainly of mental shock and suffering, grief and sorrow, loss of companionship, deprivation of the use and comfort of the intestate's society, together with the pecuniary loss incident thereto. *Gomillion v. Forsythe*, 218 S. C. 211, 62 S. E. (2d) 297 (1950).

And funeral expenses can be recovered, etc.

Where funeral expenses are paid by the beneficiary they are a proper element of damages. Ordinarily funeral expenses are not involved in a Lord Campbell's Act case, being usually payable out of the estate of the decedent. *Gomillion v. Forsythe*, 218 S. C. 211, 62 S. E. (2d) 297 (1950).

Verdict not excessive.—See *Dawson v.*

South Carolina Power Co., 220 S. C. 26, 66 S. E. (2d) 322 (1951).

Applied in *Folk v. United States*, 102 F. Supp. 736 (1952).

CHAPTER 24.

DECLARATORY JUDGMENTS.

§ 10-2002. Courts of record may declare rights, status and other legal relations.

The Uniform Declaratory Judgments Act covers the whole field of declaratory judgments. *Waller v. Waller*, 220 S. C. 212, 66 S. E. (2d) 876 (1951).

Necessity for existing controversy.—It is quite true that a declaratory judgment must not deal with moot or abstract matters or constitute a merely advisory opinion, and to this end there should be an existing controversy, or at least the “ripen-

ing seeds of a controversy,” but the basic purpose of the act is to provide for declaratory judgments without awaiting a breach of existing rights. *Waller v. Waller*, 220 S. C. 212, 66 S. E. (2d) 876 (1951).

Applied in *South Carolina Elec., etc., Co. v. Pinckney*, 217 S. C. 407, 60 S. E. (2d) 851 (1950); *Nolan v. Daley*, 222 S. C. 407, 73 S. E. (2d) 449 (1952).

§ 10-2003. Deed, will, written contract, statute, municipal ordinance, contract or franchise.

Action must be brought by person having substantial interest in subject matter.—An action brought under this section to determine the validity of a statute must be brought by a person having a substantial interest in the subject matter of the litigation, and to establish such an interest, he must show that he will be directly affected by the enforcement of the statute questioned. *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

Complaint is sufficient against demurrer where it states facts from which it is apparent that a justiciable controversy, actual or potential, exists, the test being not whether the construction advanced by plaintiff is correct, but whether plaintiff is entitled to have will construed. *Foster v. Foster*, *Westbrook Advance Sheets*, No. 16917, filed October 6, 1954.

Burden of proof rests upon plaintiff.—Burden of proof in an action under declaratory judgment act rests no less heavily upon shoulders of the plaintiff than in ordinary civil action, and plaintiff must prove material allegations of complaint by greater weight or preponderance of testimony. *Martin v. Cantrell*, --- S. C. ---, 81 S. E. (2d) 37 (1954).

One whose civil or political rights are

directly affected by a statute may have the necessary interest to challenge the validity of the statute by a declaratory judgment proceeding. *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

A taxpayer of a school district and a patron of the schools therein had sufficient interest in the controversy to bring an action under this section to determine the validity of a statute dealing with the election of school trustees and to have the election of trustees pursuant to such statute declared null and void. *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

Taxpayer's suit to determine validity of act fixing marriage license fees.—A taxpayer could not maintain a suit for a declaratory judgment to determine the validity of an act fixing fees for issuance of marriage licenses in a certain county and the rights of other persons in funds collected under the act, where he was not shown to be injuriously affected by the act. *Manning v. Dillon County*, 223 S. C. 240, 75 S. E. (2d) 250 (1953).

Suit for declaratory judgment to determine rights under will held to present actual controversy and not to be premature. *Waller v. Waller*, 220 S. C. 212, 66 S. E. (2d) 876 (1951).

§ 10-2008. Parties.

Applied in *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

CHAPTER 25.

INJUNCTIONS.

§ 10-2055. Conditions under which temporary injunction granted.

I. GENERAL CONSIDERATION.
The terms “temporary injunction” and “restraining order” are properly distin-

guishable. *Epps v. Bryant*, 218 S. C. 359, 62 S. E. (2d) 832 (1950).

§ 10-2055.1. When temporary injunction granted; copy of affidavit to be served.

Quoted in *Epps v. Bryant*, 218 S. C. 359, 62 S. E. (2d) 832 (1950).

§ 10-2055.2. Order to show cause why injuncton should not be granted; temporary restraint.

A distinction exists between an order granting an injunction and an order simply restraining, etc.

In accord with paragraph under this catchline in Code. See *Epps v. Bryant*, 218 S. C. 359, 62 S. E. (2d) 832 (1950).

§ 10-2057. Security upon injunction; how damages ascertained.

I. REQUIREMENTS AND JURISDICTION.

Purpose of section.—The issuance of a temporary injunction is a drastic remedy, and the terms of this section are intended to provide for protection, in favor of the parties enjoined, in case the injunction should ultimately be deemed improper, and due compliance with these protective terms should always be required. *Epps v. Bryant*, 218 S. C. 359, 62 S. E. (2d) 832 (1950).

However, the failure of the judge to require the bond, etc.

In accord with 1st paragraph under this catchline in Code. See *Epps v. Bryant*,

218 S. C. 359, 62 S. E. (2d) 832 (1950).

Undertaking not required on simple restraining order.

In accord with paragraph under this catchline in Code. See *Epps v. Bryant*, 218 S. C. 359, 62 S. E. (2d) 832 (1950).

Increasing amount of undertaking.—See note to § 10-2059.

II. REMEDY FOR FAILURE TO GIVE BOND.

Remedy when bond not required.

In accord with paragraph under this catchline in Code. See *Epps v. Bryant*, 218 S. C. 359, 62 S. E. (2d) 832 (1950).

§ 10-2059. Motion to vacate or modify injunction.

This section authorizes a judge to increase the amount of an undertaking fixed in an injunction order granted on an ex parte application, upon a proper showing that said amount is inadequate for the protection of the defendant. *Epps v. Bryant*, 219 S. C. 307, 65 S. E. (2d) 112 (1951).

Unless such amount was fixed after due notice and hearing.—The amount of the

bond cannot be increased where it has been fixed by the court after due notice and a hearing. *Epps v. Bryant*, 219 S. C. 307, 65 S. E. (2d) 112 (1951).

When defendant has been heard this section does not apply.

In accord with paragraph under this catchline in Code. See *Epps v. Bryant*, 219 S. C. 307, 65 S. E. (2d) 112 (1951).

CHAPTER 26.

MANDAMUS

§ 10-2103. Place of trial; damages and costs.

Cited in *Fordham v. Fordham*, 223 S. C. 401, 76 S. E. (2d) 299 (1953).

CHAPTER 28.

PARTITION.

§ 10-2205. Jurisdiction of common pleas; sale.

Applied in *Cooley v. Cooley*, 222 S. C. 513, 73 S. E. (2d) 712 (1952).

§ 10-2209. Allotment or sale.

Applied in *Cooley v. Cooley*, 222 S. C. 513, 73 S. E. (2d) 712 (1952).

§ 10-2210. Sale may be ordered without writ upon testimony taken.

Applied in *Cooley v. Cooley*, 222 S. C. 513, 73 S. E. (2d) 712 (1952).

CHAPTER 29.

QUO WARRANTO AND SCIRE FACIAS.

§ 10-2256. Action against usurpers, for forfeiture of office or against persons acting as corporation.

Section inapplicable to suit for declaratory judgment.—This section does not require that a suit for a declaratory judgment to determine the validity of a statute dealing with the election of school trustees

be brought by the Attorney General in the name of the State, or by a private party on leave granted by the circuit judge. *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

CHAPTER 30.

RECEIVERSHIP AND OTHER PROVISIONAL REMEDIES.

§ 10-2301. Appointment.

I. GENERAL CONSIDERATION.

This section is not invalid as an attempt on the part of the State to exercise the bankruptcy power, as there is no power under it to discharge the debtor from its debts. *Stevens v. Carolina Scenic Stages*, 208 F. (2d) 332 (1953).

Appointment not subject to collateral attack in bankruptcy court.—If there was error in the appointment of a receiver under this section, it would not be a matter which would subject the appointment to collateral attack in the court of bankruptcy, since the appointing court had jurisdiction of the subject matter and the parties. *Stevens v. Carolina Scenic Stages*, 208 F. (2d) 332 (1953).

Bankruptcy court erred in entering turn

over order to State court receiver.—Where receiver was appointed by State court more than four months prior to proceedings in bankruptcy under Chapter XI, 11 U. S. C. A. §§ 701 et seq., it was error on the part of the bankruptcy court to enter an order directing the receiver to turn over to debtor the property held by him as receiver. *Stevens v. Carolina Scenic Stages*, 208 F. (2d) 332 (1953).

Cited in *Fagan v. Timmons*, 217 S. C. 432, 60 S. E. (2d) 863 (1950).

IV. SUBDIVISION (4).

Purpose bona fide liquidation. In accord with paragraph under this catchline in Code. See *Stevens v. Carolina Scenic Stages*, 208 F. (2d) 332 (1953).

CHAPTER 31.

RECOVERY OF REAL PROPERTY.

ARTICLE 1.

General Provisions.

§ 10-2401. Who may bring action to determine adverse claim.

This section and §§ 10-2403 to 10-2411 extend the scope of the ancient suit to quiet title, resulting in a judgment of a declaratory nature. *Waller v. Waller*, 220 S. C. 82, 66 S. E. (2d) 876 (1951).

They were not repealed by the Uniform Declaratory Judgments Act, §§ 10-2001 to 10-2014. *Waller v. Waller*, 220 S. C. 212, 66 S. E. (2d) 876 (1951).

ARTICLE 2.

Possession and Adverse Possession.

§ 10-2421. When possession presumed; when occupation deemed under legal title.

I. GENERAL CONSIDERATION.

A private easement may be lost by adverse possession. *Outlaw v. Moise*, 222 S. C. 24, 71 S. E. (2d) 509 (1952).

But title to property dedicated to and used by the public for streets and highways cannot be acquired by prescription or adverse possession as against the State or any of its political subdivisions. *Outlaw v. Moise*, 222 S. C. 24, 71 S. E. (2d) 509 (1952).

Applied in *Fogle v. Void*, 223 S. C. 83, 74 S. E. (2d) 358 (1953).

III. ADVERSE POSSESSION.

A. Elements.

1. Possession.

The payment of taxes does not confer title, but it may be an important factor with reference to adverse possession, and also ouster by a cotenant, for it shows that the claimant from the beginning claimed

title to the land in severability, having returned it in his own name, and having paid the taxes thereon. *Brevard v. Fortune*, 221 S. C. 117, 69 S. E. (2d) 355 (1952).

And failure to pay taxes may be evidence that no claim was made.—A person in order to prove title by adverse possession does not have to show the payment of taxes on the land that he claims. However, the failure to pay taxes may be regarded as a circumstance that weakens a claim of ownership, or as evidence that no claim was made. *Harrelson v. Reaves*, 219 S. C. 394, 65 S. E. (2d) 478 (1951); *Terwilliger v. White*, 222 S. C. 176, 72 S. E. (2d) 169 (1952).

2. Continuous Period.

Also possession of the heir may be tacked, etc.

In accord with paragraph under this catchline in Code. See *Terwilliger v. Daniels*, 222 S. C. 191, 72 S. E. (2d) 167 (1952); *Terwilliger v. White*, 222 S. C. 176, 72 S. E. (2d) 169 (1952).

Where one of two or more heirs continues the occupation he had maintained under his ancestor who was an adverse holder, it will be presumed, nothing appearing to the contrary, that the possession of this heir is for the benefit of all the estate and in the right of the other heirs as well. And if the heir claims against a third party solely in his own right his possession can be tacked to that of the ancestor, provided the evidence tends either to sustain an ouster of his cotenant, or that his possession was also the possession of the other heirs, as cotenants and equally for their benefit. *Terwilliger v. Marion*, 222 S. C. 185, 72 S. E. (2d) 165 (1952).

Although the grantee of a disseisor cannot unite his possession, etc.

The possession of the grantor cannot be tacked on to that of the grantee so as to defeat the title of the true owner. *Adams v. Adams*, 220 S. C. 131, 66 S. E. (2d) 809 (1951).

3. Hostile Holding.

An entry under a parol gift of land, though permissive and friendly in the popular sense, is hostile and adverse to the paper title in the legal sense, because there is an assertion of ownership in the occupant. *Harrelson v. Reaves*, 219 S. C. 394, 65 S. E. (2d) 478 (1951); *Brevard v. Fortune*, 221 S. C. 117, 69 S. E. (2d) 355 (1952).

B. Illustrations.

The occupancy of a licensee is manifestly that of the licensor. *Brevard v. Fortune*, 221 S. C. 117, 69 S. E. (2d) 355 (1952).

And the possession of a grantor is that of a tenant or trustee of his grantee.

By the execution and delivery of a deed of land, the entire legal interest in the premises vests in the grantee, and, if the grantor continues in possession afterward,

his possession will be that either of tenant or trustee of the grantee. He will be regarded as holding the premises in subreversion to the grantee, and nothing short of an explicit disclaimer of such relation, and a notorious assertion of right in himself, will be sufficient to change the character of his possession and render it adverse to the grantee. *Love v. Turner*, 78 S. C. 513, 59 S. E. 529 (1906); *Griggs v. Griggs*, 199 S. C. 295, 19 S. E. (2d) 477 (1942); *Terwilliger v. White*, 222 S. C. 176, 72 S. E. (2d) 169 (1952).

And the general rule is that the possession of one cotenant is the possession of all (which is a variation of the rule that unexplained possession raises a presumption of adverse possession). *Knotts v. Joiner*, 217 S. C. 99, 59 S. E. (2d) 850 (1950).

And title by adverse possession may be acquired only after ouster.—Title by ten years' adverse possession by a cotenant against another may be acquired only after actual ouster of which the latter has notice, or should have in the exercise of reasonable diligence and vigilance. *Watson v. Little*, 224 S. C. 359, 79 S. E. (2d) 384 (1953).

Physical ouster of other cotenants is not necessary to render one cotenant's possession adverse.—While a physical ouster, or "turning out by the heels," as some of the judges have termed it, is not necessary in establishing title in a tenant in common by adverse possession, nevertheless an actual ouster and an exclusion of the other tenants from possession must be shown. The acts relied on to establish an ouster must be of an unequivocal nature, and so distinctly hostile to the rights of the other cotenants that the intention to dispossess is clear and unmistakable. *Brevard v. Fortune*, 221 S. C. 117, 69 S. E. (2d) 355 (1952), quoting *Wells v. Coursey*, 197 S. C. 483, 15 S. E. (2d) 752 (1941).

But possession must be such as to amount to ouster.—In order that one of several cotenants may acquire title by adverse possession as against the others, his possession must be of such actual, open, notorious, exclusive and hostile character as to amount to an ouster of the other cotenants. *Wells v. Coursey*, 197 S. C. 483, 15 S. E. (2d) 752 (1941); *Brevard v. Fortune*, 221 S. C. 117, 69 S. E. (2d) 355 (1952). *Terwilliger v. Marion*, 222 S. C. 185, 72 S. E. (2d) 165 (1952).

The hostile character of the possession must be such as to amount to an ouster of the other cotenant or cotenants and must be clearly and unmistakably established by the evidence. While the possessor need not give express notice of the hostility of his possession to the other or others, the nature of it must be brought home to the other owner or owners.

Ouster is presumed from possession only if it is continued for a period of twenty years. *Watson v. Little*, 224 S. C. 359, 79 S. E. (2d) 384 (1953).

The statute must operate prospectively from the time of ouster, whenceforward the possession of the claiming cotenant must conform to the requirements of adverse possession in order to ripen title in him. *Watson v. Little*, 224 S. C. 359, 79 S. E. (2d) 384 (1953).

And proof of exclusive possession for the statutory period raises a presumption of ouster, etc.

In accord with paragraph under this catchline in Code. See *Knotts v. Joiner*, 217 S. C. 99, 59 S. E. (2d) 850 (1950).

The open, notorious, continuous, hostile and exclusive possession by one tenant in common with the use and exercise of authority incident to exclusive and adverse ownership for a period of twenty years presumes ouster, and to acquire such possession an heir may tack his possession to that of his ancestor. *Wells v. Coursey*, 197 S. C. 483, 15 S. E. (2d) 752 (1941); *Brevard v. Fortune*, 221 S. C. 117, 69 S. E. (2d) 355 (1952).

Ouster is presumed from possession only if it is continued for a period of twenty years. *Watson v. Little*, 224 S. C. 359, 79 S. E. (2d) 384 (1953).

And grantee of cotenant may hold adversely to other cotenants.

In accord with paragraph under this catchline in Code. See *Knotts v. Joiner*, 217 S. C. 99, 59 S. E. (2d) 850 (1950).

However, possession under deed conveying merely interest of grantor is prima facie not adverse.—If a conveyance purports to be, not of the entire interest in the property, but of the interest of the grantor merely, the possession of the grantee is prima facie like that of his grantor, that of a cotenant only, and not adverse to the other cotenant, and the latter is justified in assuming this to be the case. *Knotts v. Joiner*, 217 S. C. 99, 59 S. E. (2d) 850 (1950).

But minority of one cotenant will prevent operation of statute.

In accord with 1st paragraph under this catchline in Code. See *Adams v. Adams*, 220 S. C. 131, 66 S. E. (2d) 809 (1951).

Evidence insufficient to show title by adverse possession. *Phillips v. DuBose*, 223 S. C. 224, 75 S. E. (2d) 56 (1953).

CHAPTER 32.

RECOVERY OF PERSONAL PROPERTY.

§ 10-2501. When plaintiff may claim immediate delivery.

Summons must be issued before proceeding commenced.—Under the terms of this section a proceeding to obtain immediate delivery of property may not be commenced until the summons has been issued. *Plowden v. Mack*, 217 S. C. 226, 60 S. E. (2d) 311 (1950).

And this provision is mandatory.—The provision of this section that the summons must be issued before the proceeding for immediate possession is commenced is mandatory. Thus where no summons was issued until four days after the property was seized by the sheriff, this omission invalidated the seizure. *Plowden v. Mack*, 217 S. C. 226, 60 S. E. (2d) 311 (1950).

And voluntary appearance by defendant does not validate wrongful seizure.—While, by filing a petition in the cause attacking

the validity of the proceedings, defendant voluntarily appeared and waived the necessity of a summons, where this occurred four days after the property had been seized it did not have the effect of validating the wrongful seizure. *Plowden v. Mack*, 217 S. C. 226, 60 S. E. (2d) 311 (1950).

But the requirements of this section need not be met unless plaintiff desires to obtain immediate possession. The procedure set forth in these sections constitutes solely a subsidiary or ancillary remedy which the plaintiff may at his option pursue. *Plowden v. Mack*, 217 S. C. 226, 60 S. E. (2d) 311 (1950).

And plaintiff is entitled to have his action for possession of property tried though seizure was illegal. *Plowden v. Mack*, 217 S. C. 226, 60 S. E. (2d) 311 (1950).

§ 10-2503. Affidavit and its requisites.

And is not necessary unless immediate delivery claimed.

In accord with paragraph under this catchline in Code. See *Plowden v. Mack*, 217 S. C. 226, 60 S. E. (2d) 311 (1950).

§ 10-2504. Requisition to sheriff to take and deliver property.

Requirements of section need not be met unless plaintiff desires immediate possession. *Plowden v. Mack*, 217 S. C. 226,

Verified complaint may be used to augment affidavit. *Plowden v. Mack*, 217 S. C. 226, 60 S. E. (2d) 311 (1950).

Cited in *Rhode v. Ray Waits Motors*, 223 S. C. 160, 74 S. E. (2d) 823 (1953).

60 S. E. (2d) 311 (1950).

Cited in *Rhode v. Ray Waits Motors*, 223 S. C. 160, 74 S. E. (2d) 823 (1953).

§ 10-2505. When sheriff to take property; security required.

Bond not mandatory unless immediate possession desired. 217 S. C. 226, 60 S. E. (2d) 311 (1950).
 In accord with paragraph under this catchline in Code. See *Plowden v. Mack*, 223 S. C. 160, 74 S. E. (2d) 823 (1953).
 Cited in *Rhode v. Ray* *Waits Motors*, 60 S. E. (2d) 311 (1950).

§ 10-2507. Service of papers on defendant.

Requirements of section need not be met unless plaintiff desires immediate possession. *Plowden v. Mack*, 217 S. C. 226, 60 S. E. (2d) 311 (1950).

CHAPTER 33.

REMEDIES OF MINOR INCOMPETENTS AND FEMALES.

Article 3.
Adoption.

Sec.
10-2587. Gift to adopted illegitimate child.

Sec.
10-2584. Order of court and change of name.

ARTICLE 3.

*Adoption.***§ 10-2581. Petition for adoption.**

Adoption exists in this State only by virtue of statutory law. *Driggers v. Jolley*, 219 S. C. 31, 64 S. E. (2d) 19 (1951).

§ 10-2584. Order of court and change of name.

The court, upon an examination into the merits of the petition either in open court or upon reference may grant the prayer thereof upon such terms as may to the court seem proper and the name of the child shall be changed, if so provided in the decree.

1942 Code § 8679; 1932 Code § 8679; Civ. C. '22 § 5578; Civ. C. '12 § 3798; Civ. C. '02 § 2704; R. S. 2204; 1882 (21) 79; 1896 (22) 199; 1900 (23) 429; 1907 (25) 581; 1911 (27) 144; 1954 (48) 1763.

Effect of amendment.—All after the word "decree" eliminated by A. & J. R. 1954 (48). See § 19-52.11, inheritance by or from adopted children.

§ 10-2587. Gift to adopted illegitimate child.

No person who adopts any illegitimate child shall give to such child by deed or otherwise except by will any greater portion of his estate than is allowed by law unless such person has no lawful wife or issue living at the time of his death.

1942 Code § 8679; 1932 Code § 8679; Civ. C. '22 § 5578; Civ. C. '12 § 3798; Civ. C. '02 § 2704; R. S. 2204; 1882 (21) 79; 1896 (22) 199; 1900 (23) 429; 1907 (25) 581; 1911 (27) 144; 1954 (48) 1763.

Effect of admendment.—Inheritance by adopted illegitimate child provisions eliminated by A. & J. R. 1954(48) 1763. See § 19-52.11.

Title 11.

Contracts and Agency.

CHAPTER 3.

STATUTES OF FRAUDS.

§ 11-101. Agreements required to be in writing.

I. GENERAL CONSIDERATION.

Failure or refusal to perform is not fraud taking contract out of statute. — A mere failure or refusal to perform an oral contract, within the statute of frauds, is not such fraud as will take the case out

of the operation of the statute, and this is ordinarily true even though the other party has changed his position to his injury. *United Merchants & Manufacturers v. South Carolina Elec., etc., Co.*, 113 F. Supp. 257 (1953).

Statute of frauds may not be set up as protection of fraud.—Statute of frauds being designed as a protection against fraud, equity will not allow it to be set up as protection or support of fraud, and although equity will not execute, specifically, contracts concerning lands which are not manifested in writing as required by this section, it will cancel conveyances obtained by fraudulent misrepresentations in parol, or impose upon legal owners character of trustees. *Gardner v. Nash*, — S. C. —, 82 S. E. (2d) 123 (1954).

IV. CONTRACTS RELATING TO LAND.

A parol gift of land does not and cannot ipso facto transfer the title to the land. *Brevard v. Fortune*, 221 S. C. 117, 69 S. E. (2d) 355 (1952).

But it may ripen into title by adverse possession.—It is well established in this State that a parol gift of land may ripen into title where accompanied by actual possession for the statutory period, with claim of ownership, and under such a gift the donee's possession is adverse from its inception. *Harrelson v. Reaves*, 219 S. C. 394, 65 S. E. (2d) 478 (1951); *Brevard v. Fortune*, 221 S. C. 117, 69 S. E. (2d) 355 (1952).

Equity will nullify conveyances obtained by fraudulent misrepresentations in parol.—Statute of frauds being designed as a protection against fraud, equity will not allow it to be set up as protection or support of fraud, and although equity will not execute, specifically, contracts concerning lands which are not manifested in writing as required by this section, it will cancel conveyances obtained by fraudulent misrepresentations in parol, or impose upon legal owners character of trustees. *Gardner v. Nash*, — S. C. —, 82 S. E. (2d) 123 (1954).

Parol agreement to purchase for another at judicial sale.—In absence of fraud in sale and action merely for enforcement of oral agreement whereby purchaser agreed to bid in land at judicial sale and later, upon being reimbursed, reconvey same to mortgagor-debtor, the statute of frauds would not allow the agreement to be established by parol. *Gardner v. Nash*, — S. C. —, 82 S. E. (2d) 123 (1954).

Nor to person who agreed to bid for another at auction.

In accord with paragraph under this catchline in Code. See *Gardner v. Nash*, — S. C. —, 82 S. E. (2d) 123 (1954).

Applied in Smith v. Traxler, 224 S. C. 290, 78 S. E. (2d) 630 (1953).

V. AGREEMENT NOT TO BE PERFORMED WITHIN YEAR.

The statute of frauds is a complete defense to a claim for damages that the defendant has breached an oral contract that

could not be performed within the space of a year. *United Merchants & Manufacturers v. South Carolina Elec., etc., Co.*, 113 F. Supp. 257 (1953).

But contract must show on its face that it is incapable of performance within year.—Unless an alleged parol contract shows on its face that it is not capable of being performed within one year, it does not contravene the statute of frauds. There must be a negation of the right to perform the contract within a year. *Elkins v. Plywoods-Plastics Corps.*, 219 S. C. 296, 65 S. E. (2d) 243 (1951).

This statute does not apply, etc.

In accord with paragraph under this catchline in Code. See *Joseph v. Sears Roebuck & Co.*, 224 S. C. 105, 77 S. E. (2d) 583 (1953).

And is not applicable where contingency may occur, etc.

In accord with 1st paragraph under this catchline in Code. See *Joseph v. Sears Roebuck & Co.*, 224 S. C. 105, 77 S. E. (2d) 583 (1953).

Such as oral contract of insurance.

In accord with 1st paragraph under this catchline in Code. See *Joseph v. Sears Roebuck & Co.*, 224 S. C. 105, 77 S. E. (2d) 583 (1953).

An oral warranty that a pressure cooker sold to plaintiff by defendant was not dangerous and would not explode was one subject to a contingency which might occur within one year after its making and therefore not within the statute. *Joseph v. Sears Roebuck & Co.*, 224 S. C. 105, 77 S. E. (2d) 583 (1953).

Order submitting question of intention of parties to jury held proper. *Elkins v. Plywoods-Plastics Corp.*, 219 S. C. 296, 65 S. E. (2d) 243 (1951).

VII. PART PERFORMANCE.

Part performance may take oral contract to make will out of statute.

A parol contract to devise real estate in exchange for services, when it is fully established by clear and convincing proof and has been performed by the party asking relief, will be enforced by a court of equity. *McLauchlin v. Gressette*, 224 S. C. 296, 79 S. E. (2d) 149 (1953).

Evidence held sufficient to establish an oral contract to make a will and performance sufficient to take the case out of the statute of frauds. *Kirkpatrick v. Kirkpatrick*, 223 S. C. 357, 75 S. E. (2d) 876 (1953).

A donee may have a decree for specific performance of a parol gift of land, provided there is sufficient partial performance to take the case out of the statute of frauds, such as full possession thereunder and the making of permanent and valuable improvements to the property. *Brevard v. Fortune*, 221 S. C. 117, 69 S. E. (2d) 355 (1952).

Title 12**Corporations.***

- Chap. 1. General Provisions, §§ 12-1 to 12-2.2.
 2. Creation and Organization of Corporations Generally, §§ 12-52, to 12-63.
 4. Capital Stock and Stockholders; Bonds, §§ 12-247 to 12-287.
 11. Foreign Corporations, §§ 12-708 to 12-732.1.

CHAPTER 1.**GENERAL PROVISIONS.**

Sec.
 12-1 to 12-2.2. [Repealed.]

§§ 12-1 to 12-2.2. Annual reports of domestic corporations; verification thereof; penalties; etc.

Repealed by A. & J. R. 1953 (48) 301.

Cross reference.—See now §§ 65-621 to 65-640.

CHAPTER 2.**CREATION AND ORGANIZATION OF CORPORATIONS GENERALLY.****Article 1.****Creation and Organization.**

Sec.

12-63. Charters perpetual; liquidation.

Sec.
 12-52. Initial meeting of subscribers; election of board.

ARTICLE 1.*Creation and Organization.*

§ 12-52. Initial meeting of subscribers; election of board.

Two or more persons desiring to form a corporation for any purpose whatsoever or two or more combined (except for municipal purposes and except also for a railroad, railway, turnpike, canal or steamboat corporation) shall when not less than fifty per cent of the proposed capital stock shall have been subscribed by bona fide subscribers call the subscribers together. At such meeting of the subscribers, a majority of them in value being present in person or by proxy, the subscribers shall proceed to the organization of the proposed corporation by the election from among themselves of a board of directors, trustees or managers of such number as they may deem proper, not to exceed seventeen in number. Such board shall manage the affairs of the proposed corporation until their successors shall have been elected and shall have qualified according to the constitution and bylaws of the proposed corporation.

1942 Code §§ 7726, 7729; 1932 Code §§ 7726, 7729; Civ. C. '22 §§ 4301; Civ. C. '12 §§ 2834, 2837; Civ. C. '02 §§ 1880, 1883; 1896 (22) 92, 94; 1897 (22) 522; 1900 (23) 386; 1903 (24) 75; 1920 (31) 754; 1923 (33) 157; 1936 (39) 1337; 1952 (47) 2173.

Effect of amendment.—The amendment increased the maximum number of directors from fifteen to seventeen.

§ 12-63. Charters perpetual; liquidation.

All charters granted under the provisions of this chapter shall continue of force perpetually unless limited by the terms of the petition; provided, that all corporations shall always have the right to go into liquidation and to wind up their affairs upon a stockholders' vote representing a majority of capital stock had after such notice as is provided in § 12-642.

* As to incorporation of cooperative credit unions, see § 8-702.

1942 Code § 7743; 1932 Code § 7743; Civ. C. '22 § 4317; Civ. C. '12 § 2848; Civ. C. '02 § 1891; 1896 (22) 97; 1897 (22) 524; 1898 (22) 771; 1953 (48) 245.

Effect of amendment.—The amendment same type of notice no change of substance was effected.
changed the reference from § 12-403 to § 12-642 but as each section provides for the

CHAPTER 3.

POWERS OF CORPORATIONS GENERALLY.

§ 12-101. Powers of all private corporations.

Rural electric cooperative, organized under §§ 12-1001 et seq., is not subject to suit in tort. Byrd v. Blue Ridge Rural Electrical Cooperative, 118 F. Supp. 868 (1954).

CHAPTER 4.

CAPITAL STOCK AND STOCKHOLDERS; BONDS.

ARTICLE 1.

General Provisions.

§ 12-201. Dividends to be paid only out of earnings or earned surplus.

Stated in Industrial Equipment Co. v. Montague, 224 S. C. 510, 80 S. E. (2d) (114) (1954).

CHAPTER 4.

CAPITAL STOCK AND STOCKHOLDERS; BONDS.

Article 4.

Certificates of Stock.

Sec. 12-247. Issuance of duplicate account books by building and loan association.

Article 7.

Increase and Decrease of Capital Stock.

Sec. 12-287. Automatic increase or decrease for building and loan associations.

ARTICLE 4.

Certificates of Stock.

§ 12-247. Issuance of duplicate account books by building and loan associations.

Notwithstanding the provisions of §§ 12-242 and 12-243, upon the filing with a State chartered building and loan association by the holder of record as shown by the books of the association, or by his legal representative, of an affidavit to the effect that the certificate or account book evidencing his savings account with the association has been lost or destroyed and such certificate or account book has not been pledged or assigned in whole or in part, such State chartered association may issue a new certificate or account book evidencing such savings account in the name of the holder of record. The board of directors shall, whenever in its judgment it is necessary, require advertisement as provided in § 12-242 or the filing of a bond as provided in § 12-243, or both.

1954 (48) 1701.

ARTICLE 7.

Increase and Decrease of Capital Stock.

§ 12-287. Automatic increase or decrease for building and loan associations.

Notwithstanding the provisions of §§ 12-271 to 12-286, the capital stock of any building and loan association chartered by this State shall not be limited to the amount stated in its original charter or by any amendment thereto but such capital stock shall be increased or decreased automatically so as to equal at all times the

aggregate of payments on shares of stock, either fully paid or installment accounts, plus dividends credited to such accounts, less redemptions and withdrawals.
1954 (48) 1723.

CHAPTER 6.

OFFICERS AND DIRECTORS.

ARTICLE 2.

Nonresident Directors.

§ 12-361. Secretary of State attorney for service of process on nonresident directors.

Constitutionality.—Where a state has an interest in regulating operations and transactions by nonresidents, it has power to enact appropriate legislation for the bringing of a nonresident into its forum in actions affecting his transactions in that state, and § 10-432.1 providing for service upon

nonresident corporate director and this section, being neither an arbitrary nor unreasonable attempt to exercise the authority vested in it in the public interest, are not constitutionally objectionable as denying due process. *Wagenberg v. Charleston Wood Products*, 122 F. Supp. 745 (1954).

§ 12-363. Secretary of corporation to report nonresident directors to Secretary of State.

Stated in *Wagenberg v. Charleston Wood Products*, 122 F. Supp. 745 (1954).

CHAPTER 8.

MERGER AND CONSOLIDATION IN GENERAL.

§ 12-451. Right to consolidate or merge.

Applied in *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

Cited in *Johnson v. Abney Mills*, 219 S. C. 231, 64 S. E. (2d) 641 (1951).

§ 12-457. Effect of consolidation.

Applied in *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

§ 12-459. Dissenting stockholders to be paid value of stock.

Purpose of §§ 12-459 to 12-462.—The remedy of appraisal and payment provided in §§ 12-459 to 12-462 was intended to afford fair and just compensation to the dissenters and at the same time provide a method by which their objections could be fairly composed so as to enable the consolidation to proceed. *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

There is no underlying "natural right" of a shareholder to follow his investment into a consolidated corporation. *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

Sections 12-459 to 12-462 enter into and form a part of the contract between the corporation and the stockholders. *John-*

son v. Baldwin, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

And dissenting shareholder is put to an election.—A dissenting stockholder is put to an election by a statute of this kind. Of course there may be circumstances under which the duty to make an election does not arise. For instance, if the merger is not authorized by law or if brought about through fraudulent conduct, the dissenting stockholder has the right to go in a court of equity and seek an injunction against consummation of the merger. *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

Applied in *Johnson v. Abney Mills*, 219 S. C. 231, 64 S. E. (2d) 641 (1951).

§ 12-461. Dissenting stockholder ceases to be stockholder; rights thereof.

A dissenting stockholder ceases to be a stockholder in the constituent corporation upon making demand for the payment of his stock. *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

And may not thereafter withdraw his demand and resume his status as a stockholder.—Where a dissenting stockholder,

within the time required by statute, demanded payment for her stock and petitioned the court for the appointment of appraisers, and there was no showing that she was induced to make this demand through fraudulent concealment or false representations as to the facts, or through mistake, she was bound by her election

and could not thereafter withdraw her demand and restore her status as a stockholder. *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

Although he remains nominally a stockholder for a transitory period. — After a dissenting stockholder has made demand for the payment of his stock, there is a transitory period when he is such in name only with none of the ordinary incidents or rights of a stockholder. *Johnson v.*

Baldwin, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

He has no standing to maintain a derivative action against the directors.—A dissenting stockholder who has made demand for the payment of his stock, having ceased to be a stockholder, has no standing to continue a stockholder's derivative action against the directors of the constituent corporation for mismanagement and waste. *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

§ 12-463. Effect of consolidation on actions pending.

Quoted in *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

§ 12-464. Certain liabilities and rights not affected.

Right of stockholder to bring derivative action against directors not preserved.—The derivative right of a stockholder to bring action against the directors for mismanagement and waste is not that of a

creditor of a corporation whose rights are preserved under this section. *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

CHAPTER 10.

DISSOLUTION AND TRANSFER OF ALL ASSETS.

ARTICLE 1.

General Provisions.

§ 12-601. Continuance for closing affairs after expiration, dissolution, etc.

Quoted in dissenting opinion Stukes, *Westbrook Advance Sheets*, No. 16922, A. J., in *Foster, Admx. v. Rulane Gas Co.*, filed Nov. 1, 1954.

§ 12-608. Recording cancellation or surrender of charters.

Cited in dissenting opinion Stukes, A. J., *brook Advance Sheets*, No. 16922, filed in *Foster, Admx. v. Rulane Gas Co.*, *Westbrook*, Nov. 1, 1954.

ARTICLE 3.

Sale of Major Assets.

§ 12-635. Effect of payment.

When interest of dissenting stockholder ceases.—Under this section the interest of the dissenting stockholder in his stock does not cease until he has been paid its value

or provision made for payment. *Johnson v. Baldwin*, 221 S. C. 141, 69 S. E. (2d) 585 (1952).

ARTICLE 4.

Voluntary Dissolutions.

§ 12-644. Dissolution not to bar action.

Quoted in dissenting opinion Stukes, *Westbrook Advance Sheets*, No. 16922, A. J., in *Foster, Admx. v. Rulane Gas Co.*, filed Nov. 1, 1954.

CHAPTER 11.

FOREIGN CORPORATIONS.

Article 1.

General Provisions.

Sec.
12-708. Copies of papers to be furnished and received in evidence.

Article 3.

Fees and Annual Reports.

Sec.
12-732, 12-732.1. [Repealed.]

ARTICLE 1.

*General Provisions.***§ 12-703. Contracts with citizens deemed made in State.**

Applied in *Meinhard, Greeff & Co. v. Maryland Casualty Company*, 123 F. Supp. Edens, 189 F. (2d) 792 (1951); *Schafer v.* 873 (1954).

§ 12-705. Foreign corporations subject to laws of State.

Stated in dissenting opinion Stukes, A. J., in *Foster, Admx. v. Rulane Gas Co.*, Westbrook Advance Sheets, No. 16922, filed Nov. 1, 1954.

Cited in dissenting opinion Stukes, A. J., in *Foster, Admx. v. Rulane Gas Co.*, Westbrook Advance Sheets, No. 16922, filed Nov. 1, 1954.

§ 12-708. Copies of papers to be furnished and received in evidence.

Any person applying therefor shall be entitled to copies, duly certified, of all papers required to be filed under the provisions of this chapter upon payment of the required fees. Certified copies of such papers shall be admitted in the courts as competent evidence of all matters appearing thereon.

1942 Code § 7772; 1932 Code § 7772; Civ. C. '22 § 4031; Civ. C. '12 § 2667; Civ. C. '02 § 1782; R. S. 1468; 1953 (48) 190.

Effect of amendment.—The amendment act recites that a portion of § 7772 of the Code of 1942 was omitted when that section was recodified as § 12-708 of the Code of 1952 and hence the second sentence of

the section was added. The omission of the second sentence in the 1952 Code was, however, deliberate as its substance was covered by § 26-101 and its re-enactment is therefore surplusage.

ARTICLE 2.

*Qualification and Withdrawal.***§ 12-721. Stipulation to be filed by foreign corporations.**

This and §§ 12-722 and 10-424, which constituted a single section in 1942 Code (§ 7765), must be construed together. *Foster, Admx. v. Rulane Gas Co.*, Westbrook Advance Sheets, No. 16922, filed Nov. 1, 1954, concurring opinion Legge,

A. J.

Cited in dissenting opinion Stukes, A. J., in *Foster, Admx. v. Rulane Gas Co.*, Westbrook Advance Sheets, No. 16922, filed Nov. 1, 1954.

§ 12-722. Effect of failure to file.

Resident of this State cannot obtain jurisdiction in this State of foreign corporation previously domesticated in this State, upon a cause of action arising in another state and not connected with any business activities in this State of the foreign corporation, by service of summons and complaint upon Secretary of State of this State, after foreign corporation had withdrawn from this State. *Foster, Admx. v. Rulane Gas Co.*, Westbrook Advance Sheets, No. 16922, filed Nov. 1,

1954.

This and §§ 12-721 and 10-424, which constituted a single section in 1942 Code (§ 7765), must be construed together. *Foster, Admx. v. Rulane Gas Co.*, Westbrook Advance Sheets, No. 16922, filed Nov. 1, 1954, concurring opinion Legge, A. J.

Cited in dissenting opinion Stukes, A. J., in *Foster, Admx. v. Rulane Gas Co.*, Westbrook Advance Sheets, No. 16922, filed Nov. 1, 1954.

§ 12-723. Resignation of agent appointed.

Cited in dissenting opinion Stukes, A. J., in *Foster, Admx. v. Rulane Gas Co.*, West-

brook Advance Sheets, No. 16922, filed Nov. 1, 1954.

§ 12-725. Withdrawal of foreign corporations.

Cited in dissenting opinion Stukes, A. J., in *Foster, Admx. v. Rulane Gas Co.*, West-

brook Advance Sheets, No. 16922, filed Nov. 1, 1954.

ARTICLE 3.

*Fees and Annual Reports.***§§ 12-732, 12-732.1. Reports to Tax Commission; exceptions.**

Repealed by A. & J. R. 1953 (48) 301.

Cross reference.—See now §§ 65-621 to 65-640.

CHAPTER 12.

CHARITABLE, SOCIAL AND RELIGIOUS CORPORATIONS.

§ 12-751. Incorporation authorized.

It is to corporations formed under this chapter that exemption from liability for tort has been extended by the Supreme Court of South Carolina. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215

F. (2d) 542 (1954), reversing 118 F. Supp. 868.

Cited in *Piedmont Interstate Fair Ass'n v. Bean*, 209 F. (2d) 942 (1954).

§ 12-758. Powers of corporation.

Applied in *Frierson v. Porter Academy*, 217 S. C. 168, 60 S. E. (2d) 82 (1952).

Cited in *Byrd v. Blue Ridge Rural Elec-*

trical Cooperative, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

CHAPTER 13.

COOPERATIVE ASSOCIATIONS GENERALLY.

§ 12-801. Definition.

A cooperative organized under this chapter or the Rural Electric Cooperative Act, §§ 12-1001 et seq., is not a charitable corporation in the sense in which this term

is used in the laws of South Carolina. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

§ 12-815. Powers of association.

Stated in *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. 2d 542 (1954), reversing 118 F. Supp. 868.

CHAPTER 15.

RURAL ELECTRIC COOPERATIVE ACT.

ARTICLE 1.

*General Provisions.***§ 12-1001. Short title.**

This chapter is not unconstitutional as a special instead of a general law in violation of S. C. Const., Art. 3, § 3. *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

A cooperative organized under chapter 13, § 12-801 et seq. or under this chapter is not a charitable corporation in the sense in which this term is used in the laws of South Carolina. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868 (1954).

Rural electric cooperative not exempt

from liability for tort either as a public body or as a charitable organization, which are the only corporations so exempt under the decisions of the Supreme Court of South Carolina. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868 (1954).

Cited in *Bookhart v. Central Elec. Power Cooperative*, 222 S. C. 289, 72 S. E. (2d) 576 (1952); *Byrd v. Blue Ridge Rural Electrical Cooperative*, 118 F. Supp. 868 (1954); 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

§ 12-1002. Definitions.

Quoted in *Bookhart v. Central Elec. Power Cooperative*, 222 S. C. 289, 72 S. E. (2d) 576 (1952).

§ 12-1005. Exemption from control of Public Service Commission.

This chapter does not limit the authorized activities of an electric cooperative to rural areas not having existing electric service; this section indicates a contrary intention. *Bookhart v. Central Elec. Power Cooperative*, 222 S. C. 289, 72 S. E. (2d) 576 (1952).

But exemption from jurisdiction of the Public Service Commission does not free

the cooperatives from rate and other regulations. Such regulation is a proper exercise of the police power, provided it does not violate constitutional limitations or restrictions. This power may be exercised directly by the legislature, or indirectly through municipal corporations, boards, commissions, or other governmental bodies and agencies, to which the power has

been lawfully delegated. *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

Stated in *Byrd v. Blue Ridge Rural Elec-*

trical Cooperative, 118 F. Supp. 868 (1954), 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

§ 12-1006. Securities Act not applicable.

Securities and evidences of indebtedness issued by a rural electric cooperative are exempt from the provisions of the South Carolina Securities Act (Title 62). *Byrd v. Blue Ridge Rural Electrical Cooperative*,

118 F. Supp. 868 (1954).

Stated in *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

§ 12-1013. Annual fees.

Rural electric cooperative is exempt from all excise and income taxes except the fee required by this section. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 118 F. Supp. 868 (1954).

Rural electric cooperatives serve a beneficial public purpose and their exemption from taxation is accordingly justified on this ground. *Byrd v. Blue Ridge Rural*

Electrical Cooperative, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

Stated in *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

Cited in *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

ARTICLE 2.

Incorporation; Bylaws and Powers.

§ 12-1021. For what purpose organized.

Cooperatives organized under this chapter are public service corporations. *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

Quoted in *Bookhart v. Central Elec. Power Cooperative*, 222 S. C. 289, 72 S. E. (2d) 576 (1952); also *Byrd v. Blue Ridge Rural Electrical Cooperative*, 118 F. Supp. 868 (1954).

§ 12-1025. Powers of cooperative.

A rural electric cooperative's corporate purpose is a public one. *Bookhart v. Central Elec. Power Cooperative*, 222 S. C. 289, 72 S. E. (2d) 576 (1952).

And its exercise of the power of eminent domain is constitutional. — Exercise by a rural electric cooperative of the power of eminent domain is not in violation of the State and federal constitutions on the ground that the use to which the property is proposed to be put is private rather than public, since such cooperatives are public corporations, and their use and function public, rather than private. *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

It is under obligation to render nondiscriminatory service. — A cooperative organized under this chapter is public in its nature and purpose, with the expressly delegated power of eminent domain, which inevitably results in the obligation to reasonably render nondiscriminatory service. That affords protection to the public, including applicants for membership, from arbitrary action by way of exclusion from

membership or otherwise. *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

A rural electric power cooperative has been given authority by the General Assembly to condemn rights of way. *Bookhart v. Central Elec. Power Cooperative*, 222 S. C. 289, 72 S. E. (2d) 576 (1952).

Subsection (8) of this section gives a rural electric cooperative broad authorization to contract in reference to its transmission system, and the South Carolina Public Service Authority has the power to contract with the cooperative for use of such system to deliver the electric energy produced by it to its customers, license to do which it has in the act creating it. *Bookhart v. Central Elec. Power Cooperative*, 222 S. C. 289, 72 S. E. (2d) 576 (1952).

Rural electric cooperative is not subject to suit in tort. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 118 F. Supp. 868 (1954).

Stated in *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

ARTICLE 3.

Provisions Affecting Members.

§ 12-1031. Membership.

Cooperative must make membership available to all coming within purview of

its purpose.—Implicit in the purpose for which cooperatives are authorized by § 12-

1021, that "of supplying electric energy and promoting and extending the use thereof in rural areas," is the obligation of such corporations to make membership available, without arbitrary or unreasonable limitations thereon, to all coming within the purview of that purpose. *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

The customers, which are called "members," of the cooperatives, are in the territories of their operation the "public" which must be reasonably served, and to

whom the service must be available on equal terms, in order to satisfy the undoubted rule that the power to condemn can only be delegated for, at least principally, a public use. There is no "public" which is separable from the members in the rural areas where the cooperatives do business; and they at once take the place of the stockholders and customers of privately owned utilities; they are both owners and customers. *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

§ 12-1037. Refunds to members.

Limitations as to funds.—Rural electric cooperative has only the limited powers with regard to its funds as set forth in this

section. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 118 F. Supp. 868 (1954).

CODE OF LAWS
OF
SOUTH CAROLINA
1952

1954 Cumulative Supplement

ANNOTATED

Prepared under the supervision and direction of the
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Laws of the General Assembly of South Carolina

IN EIGHT VOLUMES

VOLUME 2

TITLES 13 TO 20

Place in Pocket of Volume 2 of Main Set

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ST. MATTHEWS, S. C.

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NOTICE

This pocket supplement is not official. At the direction of the Committee on Statutory Laws the Acts as enacted have been edited in various particulars to conform them to the style and arrangement of the Code of 1952 and to make them more readily usable by the practitioner for ordinary work. For further details see the Foreword in the Pocket Supplement to Volume 1.

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Code of Laws of South Carolina

1952

1954 CUMULATIVE SUPPLEMENT

Title 13.

Cotton.

Chap. 2. Weighers and Weighing, §§ 13-112.1 to 13-271.1.

CHAPTER 2.

WEIGHERS AND WEIGHING.

Article 1.

General Provisions.

Sec.

13-112.1. Same; special provisions in Sumter County.

Article 2.

Election or Appointment, and Terms, in Certain Localities.

13-131.1. Appointment in Edgefield County.

13-133. Two year appointments in Greenwood County and at Manning and Summerton.

13-140. Biennial elections at certain places in Lancaster and Lexington Counties.

Article 4.

Removal and Vacancies in Certain Localities.

13-165. Edgefield County.

Article 8.

Compensation and Charges in Certain Localities.

Sec.

13-224. Where charge ten cents.

13-226. Sixteen cents in Chester County.

13-227. Where twenty cents.

13-227.1. Where twenty-five cents.

13-228. Where thirty cents.

Article 10.

Provisions Applicable in Townships Containing Cities Over Twenty Thousand and Under Fifty Thousand.

13-271.1. Same; section inapplicable to Sumter County.

ARTICLE 1.

General Provisions.

§ 13-112.1. Same; special provisions in Sumter County.

No cotton weigher in Sumter County shall engage in the business of buying or selling cotton during his term of office and each cotton weigher shall devote such time to the duties of his office during the cotton weighing season as may be fixed by the governing body of the county.

1954 (48) 1555.

ARTICLE 2.

Election or Appointment, and Terms, in Certain Localities.

§ 13-131.1. Appointment in Edgefield County.

In Edgefield County cotton weighers shall be appointed by a majority of the governing body of the county and the county supervisor.

1953 (48) 78.

§ 13-133. Two year appointments in Greenwood County and at Manning and Summerton.

Cotton weighers in *Greenwood* County shall be elected and in the towns of *Manning* and *Summerton* in *Clarendon* County shall be appointed by the governing body of the county to hold office for two years and until their successors are elected or appointed and qualified.

1942 Code §§ 6402, 6405, 6419-1; 1932 Code §§ 6402, 6407; Civ. C. '22 §§ 3317, 3322; Civ. C. '12 §§ 2343, 2348; Civ. C. '02, §§ 1552, 1555; 1896 (22) 57, 58; 1897 (22) 433; 1898 (22) 802; 1901 (23) 730; 1902 (23) 1175; 1904 (24) 410, 431; 1906 (25) 140, 142; 1907 (25) 609; 1908 (25) 1043; 1909 (26) 183; 1910 (26) 715; 1911 (27) 36, 37; 1915 (29) 67; 1917 (30) 219; 1927 (35) 240, 293; 1929 (36) 104; 1930 (36) 1128; 1934 (38) 1276; 1944 (43) 2331; 1953 (48) 78.

Effect of amendment.—The election and term of cotton weighers in Edgefield County was formerly covered by this section. For new provision with respect to the appointment of such cotton weighers, see § 13-131.1.

§ 13-140. Biennial elections at certain places in Lancaster and Lexington Counties.

On the first Tuesday of August 1952 and every two years thereafter at *Pelion*, *Rishton* and *Sharp Hill* precincts, on the second Tuesday of August 1952 and every two years thereafter at *Lexington*, *Cromers*, *Irene*, *St. Matthews* and *Boylston* precincts, all in *Lexington* County, and in *Lancaster* and *Heath Springs* in *Lancaster* County the qualified electors entitled to vote in said respective precincts in *Lexington* County and the persons entitled to vote in such elections in *Lancaster* County shall elect cotton weighers, the electors of *Pelion*, *Rishton* and *Sharp Hill* precincts for the town of *Pelion*, the electors of the other above named precincts of *Lexington* County for *Lexington* and the other electors for their respective towns aforesaid. The terms of office of said cotton weighers shall be for two years and until their successors have been elected and qualified. A majority of the votes cast in such elections shall be necessary to a choice in *Lexington* County.

The governing body of *Lancaster* County shall make such rules and regulations for the government of such elections held in said county as to them shall seem proper. Said governing body shall canvass the votes polled at such elections, declare such elections and issue a commission to the person declared to be elected.

1942 Code §§ 6424, 6424-1, 6424-2, 6431, 6435, 6436; 1932 Code §§ 6424, 6431, 6435, 6436; Civ. C. '22 §§ 3342, 3344, 3345; Civ. C. '12 § 2352; Civ. C. '02 § 1558; 1899 (23) 194; 1918 (30) 761; 1920 (31) 841, 974; 1922 (32) 1009; 1930 (36) 1240; 1933 (38) 133, 338, 339; 1938 (40) 1756, 1795, 1807; 1946 (44) 1347; 1953 (48) 78.

Effect of amendment. — Formerly the section contained provisions with respect to cotton weighers in Edgefield County.

ARTICLE 4.

Removal and Vacancies in Certain Localities.

§ 13-165. Edgefield County.

In case of a vacancy in the office of cotton weigher at *Johnston*, *Edgefield* or *Trenton* in *Edgefield* County the office shall be filled by appointment within thirty days by a majority vote of the members of the governing body of the county and the county supervisor.

1942 Code §§ 6424, 6424-1, 6424-2; 1932 Code § 6424; 1930 (36) 1240; 1933 (38) 133, 338, 339; 1938 (40) 1756, 1795, 1807; 1946 (44) 1347; 1953 (48) 78.

Effect of amendment.—The section formerly contained provisions with respect to the filling of vacancies by election if the governing body and supervisor should deem such election advisable.

ARTICLE 8.

*Compensation and Charges in Certain Localities.***§ 13-224. Where charge ten cents.**

The cotton weighers at *Darlington* in *Darlington* County, in *Florence* County, at *Chappells* and *Prosperity* in *Newberry* County and at *Seneca* in *Oconee* County shall receive as compensation for their services ten cents per bale for each bale weighed by them. Such compensation shall be paid one-half by the buyer and one-half by the seller.

1952 (47) 1879.

Effect of amendment.—The amendment revised the first paragraph of the section to read as above set out by eliminating Kershaw in the counties of Lancaster and Kershaw which was formerly included.

The second paragraph of the section was not changed and therefore is not set out above. As to Kershaw, see § 13-228 as amended.

§ 13-226. Sixteen cents in Chester County.

The cotton weigher at *Chester* and any other cotton weighers in *Chester* County appointed under the provisions of § 13-138 shall receive such compensation as shall be fixed by the governing body of the county not in excess of sixteen cents per bale for each bale of cotton weighed, one-half to be paid by the seller and one-half by the buyer.

1942 Code §§ 6418, 6427; 1932 Code §§ 6418, 6427; Civ. C. '22 §§ 3331, 3339; Civ. C. '12 § 2357; 1908 (25) 1198; 1917 (30) 218; 1918 (30) 775; 1920 (31) 105, 844, 860; 1934 (38) 1212; 1944 (43) 2298; 1953 (48) 233.

Effect of amendment.—The section formerly included Greenwood County. As to amended.

§ 13-227. Where twenty cents.

The cotton weighers in the counties of *Edgefield* (except in the town of *Johnston*), *Greenwood*, *Marlboro*, *Orangeburg*, *Saluda*, *Sumter* and *York* shall be paid for their services twenty cents for every bale of cotton weighed by them, respectively, one-half to be paid by the seller and one-half by the buyer.

The cotton weighers at *Wagener* in *Aiken* County, *St. Matthews* and *Cameron* in *Calhoun* County and at *Swansea* in *Lexington* County shall receive as compensation for their respective services not exceeding twenty cents per bale for each bale of cotton weighed by them, respectively, one-half to be paid by the buyer and one-half by the seller.

The governing body of *McCormick* County shall fix the compensation to be received by the cotton weighers at *McCormick* in *McCormick* County, not to exceed twenty cents for each bale weighed by them, ten cents of which shall be paid by the seller and ten cents by the buyer.

1942 Code §§ 6408, 6412, 6424, 6424-1, 6424-2, 6425, 6426, 6431, 6437, 6439, 6440, 6447, 6454, 6455; 1932 Code §§ 6408, 6412, 6424, 6425, 6426, 6431, 6437-6439, 6440, 6448, 6454, 6455; Civ. C. '22 §§ 3337, 3338, 3342, 3346-3348, 3356, 3362, 3363; Cr. C. '22 § 538; Civ. C. '12 §§ 2352, 2354, 2364; Civ. C. '02 § 1558; 1899 (22) 194; 1908 (25) 1210; 1909 (26) 128; 1910 (26) 640; 1917 (30) 220; 1918 (30) 842; 1919 (31) 234, 261; 1920 (31) 843, 974, 1119; 1921 (32) 260; 1922 (32) 777, 783, 1009; 1924 (33) 1052, 1178; 1925 (34) 106; 1927 (35) 240; 1928 (35) 1160; 1929 (36) 66; 1930 (36) 1240; 1931 (37) 139; 1933 (38) 44, 133, 338, 339; 1934 (38) 1324; 1936 (39) 1304, 1608; 1937 (40) 384; 1938 (40) 1756, 1795, 1807; 1940 (41) 1872; 1944 (43) 1259, 2275, 2283, 2286, 2300; 1946 (44) 1347; 1947 (45) 256; 1950 (46) 2322; 1952 (47) 1727; 1953 (48) 233.

Effect of amendments.—The 1952 amendment revised the third paragraph by eliminating Heath Springs and Lancaster in Lancaster County from the coverage of the section. The 1953 amendment added Greenwood County in the first paragraph.

§ 13-227.1. Where twenty-five cents.

The cotton weigher in *Aiken* Township in *Aiken* County shall receive as compensation not more than twenty-five cents for each bale weighed by him.

1952 (47) 1925.

§ 13-228. Where thirty cents.

The cotton weighers at *Camden* in *Kershaw* County and at *Kershaw* in *Kershaw* and *Lancaster* Counties shall receive thirty cents per bale for each bale of cotton weighed by them, fifteen cents to be paid by the buyer and fifteen cents by the seller.

The governing body of *Lancaster* County shall fix the compensation to be received by the cotton weighers at *Lancaster* and *Heath Springs* in said county, such compensation not to exceed thirty cents for each bale weighed by them, fifteen cents of which shall be paid by the seller and fifteen cents by the buyer.

1952 (47) 1727, 1879.

Effect of amendments. The amendments revised the second paragraph of the section by adding *Kershaw* in *Kershaw* and *Lancaster* Counties and added a new fourth paragraph as set forth above re-

lating to *Lancaster* and *Heath Springs* in *Lancaster* County. The first and third paragraphs of the original section were unchanged and are therefore not set out above.

ARTICLE 10.

Provisions Applicable in Townships Containing Cities Over Twenty Thousand and Under Fifty Thousand.

§ 13-271.1. Same; section inapplicable to Sumter County.

The provisions of § 13-271 shall not apply to Sumter County.

1954 (48) 1557.

Title 14.**Counties.**

- Chap. 1. General Provisions, §§ 14-17 to 14-21.
 2. Boundaries of Existing Counties, §§ 14-60 to 14-86.
 8. County Planning, §§ 14-400.50 to 14-400.350.
 15. Abbeville County, §§ 14-701 to 14-704.
 16. Aiken County, § 14-759.
 18. Anderson County, § 14-863.
 23. Calhoun County, § 14-1121.
 24. Charleston County, §§ 14-1151 to 14-1297.
 25. Cherokee County, §§ 14-1317, 14-1317.1.
 26. Chester County, §§ 14-1351.1 to 14-1371.
 27. Chesterfield County, §§ 14-1403 to 14-1423.
 30. Darlington County, §§ 14-1660 to 14-1699.
 33. Edgefield County, § 14-1856.
 34. Fairfield County, § 14-1920.
 40. Horry County, §§ 14-2303.1 to 14-2317.1.
 41. Jasper County, § 14-2402.
 42. Kershaw County, §§ 14-2450 to 14-2474.
 43. Lancaster County, §§ 14-2563.1 to 14-2591.
 44. Laurens County, § 14-2610.
 47. Marion County, § 14-2801.
 50. Newberry County, §§ 14-2964.1 to 14-2967.
 51. Oconee County, §§ 14-3000 to 14-3037.
 53. Pickens County, § 14-3157.
 54. Richland County, § 14-3201.1.
 56. Spartanburg County, §§ 14-3302 to 14-3307.
 58. Union County, §§ 14-3461 to 14-3466.1.
 60. York County, § 14-3625.

CHAPTER 1.

GENERAL PROVISIONS.

Sec.

14-17. Same; local exceptions in certain counties.

Sec.

14-19.1. Same; local exceptions for Jasper County.

14-21. How court fees paid.

§ 14-17. Same; local exceptions in certain counties.

Notwithstanding the provisions of § 14-16, the fiscal year of the counties of *Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chester, Chesterfield, Colleton, Darlington, Dillon, Dorchester, Edgefield, Florence, Georgetown, Greenville, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, McCormick, Newberry, Oconee, Richland, Saluda, Spartanburg, Sumter, Union* and *York* shall begin on July 1st of each year and end on June 30th of the next following calendar year.

1942 Code § 3869; 1932 Code §§ 3869, 4777; Civ. C. '22 § 1110; Civ. C. '12 § 989; Civ. C. '02 § 804; Const. Art. 10 § 10; G. S. 621; R. S. 689; 1875 (15) 993; 1878 (16) 459; 1890 (20) 710; 1927 (35) 252; 1933 (38) 449, 438; 1935 (39) 416; 1936 (39) 1339, 1376, 1395, 1419, 1432, 1442, 1594; 1937 (40) 67, 71, 212, 391, 552; 1938 (40) 1538, 1539, 1561, 1602; 1941 (42) 57; 1942 (42) 1475; 1943 (43) 69; 1944 (43) 1167, 1181, 1201; 1945 (44) 35; 1946 (44) 1313; 1947 (45) 129, 296; 1950 (46) 1838; 1951 (47) 37; 1952 (47) 1702, 1914; 1953 (48) 239, 387.

Effect of amendments.—The 1952 amendments added Abbeville and Richland Counties to the list of counties covered by the

section and the 1953 amendments added Bamberg and Georgetown Counties.

§ 14-19. Operation of county government in county without supply act.

Applied in *McKown v. Daniel*, 217 S. C. 510, 61 S. E. (2d) 163 (1950).

§ 14-19.1. Same; local exceptions for Jasper County.

Provisions from A. & J. R. 1954 (48) 2281 make up this section.

§ 14-21. How court fees paid.

The fees allowed jurors, constables and witnesses shall be paid by the treasurers of the respective counties on the presentation to them of certificates signed by the clerk of court or may be received by such treasurers in the payment of all county taxes on presentation of such certificates duly signed by the clerk of court.

1942 Code § 3860; 1932 Code § 3860; Civ. C. '22 § 1101; Civ. C. '12 § 980; Civ. C. '02 § 795; R. S. 677; 1893 (21) 489; 1954 (48) 1770.

Effect of amendment.—The amendment eliminated requirement for presiding judge to sign certificate and also requirement for

supervisor's approval for payment of taxes with same.

CHAPTER 2.

BOUNDARIES OF EXISTING COUNTIES.

Sec.

14-60. Charleston County.

14-65. Colleton County.

Sec.

14-82. Lexington County.

14-86. Newberry County.

§ 14-57. Beaufort County.

Annexation of Yemassee Township by Jasper County constitutional. — The act [1950 (46) 2332] providing for the annexation of Yemassee Township, formerly in

Beaufort County, by Jasper County, is valid and constitutional. *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

§ 14-60. Charleston County.

Amended by A. & J. R. 1953 (48) 211.

§ 14-65. Colleton County.

Amended by A. & J. R. 1953 (48) 211.

§ 14-77. Jasper County.

Annexation of Yemassee Township constitutional.—The act [1950 (46) 2332] providing for the annexation of Yemassee Township, formerly in Beaufort County,

by Jasper County, is valid and constitutional. *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

§ 14-82. Lexington County.

Amended by A. & J. R. 1953 (48) 416.

§ 14-86. Newberry County.

Amended by A. & J. R. 1953 (48) 416.

CHAPTER 4.

CREATION OF NEW COUNTIES AND CONSOLIDATION OF COUNTIES.

§ 14-157. Appointment and duties of surveyors.

In settling the question of area the surveyors exercise a quasi-judicial power. *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

The law does not require the survey-

ors to make any actual survey of the area left in the county whose territory is to be annexed. *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

§ 14-163. General Assembly to create new county.

Act making annexation conditional on decision of court.—The General Assembly, in an act providing for the annexation of a part of one county by another, may provide that the act shall not go into effect should the court, in any action brought pursuant to permission granted by the act,

set aside the election as irregular or hold that the General Assembly was wrong in the meaning which it ascribed to a word used in the act. Such procedure is not in derogation of this section. *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

CHAPTER 7.

COUNTY OFFICERS GENERALLY.

§ 14-302. How vacancies in county offices filled.

How vacancies created in offices of county directors.—The long-continued failure of a majority, including the Senator of the York County legislative delegation to recommend persons for appointment as members of the county board of directors pursuant to the terms of the York County

Government Act created vacancies in the offices of county directors, and gave rise to the power of the Governor to appoint under the general laws, this section and § 1-122. *Bradford v. Byrnes*, 221 S. C. 255, 70 S. E. (2d) 228 (1952).

§ 14-315. Disbursing officers not to exceed or transfer appropriations; suspension by Governor.

Applied in *McKown v. Daniel*, 217 S. C. 510, 61 S. E. (2d) 163 (1950).

§ 14-324. "County Treasurer's General Monthly Cash Book" in Greenville and Union Counties.

Editor's Note.—§§ 65-2421 et seq. require Greenville County tax collector to collect current and delinquent taxes.

§ 14-326. Treasurer's report to superintendent of education in Greenville and Union Counties.

Editor's Note.—§§ 65-2421 et seq. require Greenville County tax collector to collect current and delinquent taxes.

§ 14-329. Publication of quarterly statements in Greenville and Union Counties.

Editor's Note.—§§ 65-2421 et seq. require Greenville County tax collector to collect current and delinquent taxes.

CHAPTER 8.

COUNTY PLANNING.

Article 5.1.

Planning Board for Beaufort Township in Beaufort County.

Sec.

14-400.50. Created, powers, etc.

Article 5.5.

Zoning Commission for Hanahan Public Service District in Berkeley County.

14-400.100. Created, powers, etc.

Article 5.20.

Laurens County Planning and Development Commission.

14-400.150. Created, powers, etc.

Article 5.30.

Pickens County Planning and Development Commission.

Sec.

14-400.250. Created, powers, etc.

Article 5.40.

Spartanburg County Planning and Development Commission.

14-400.350. Created, powers, etc.

ARTICLE 5.1.

Planning Board for Beaufort Township in Beaufort County.

§ 14-400.50. **Created, powers, etc.**

Provisions from A. & J. R. 1954 (48) 1806 make up this section.

ARTICLE 5.5.

Zoning Commission for Hanahan Public Service District in Berkeley County.

§ 14-400.100. **Created, powers, etc.**

Provisions from A. & J. R. 1954 (48) 1429 make up this section.

ARTICLE 5.20.

Laurens County Planning and Development Commission.

§ 14-400.150. **Created, powers, etc.**

Provisions from A. & J. R. 1954 (48) 1475 make up this section.

ARTICLE 5.30.

Pickens County Planning and Development Commission.

§ 14-400.250. **Created, powers, etc.**

Provisions from A. & J. R. 1954 (48) 1847 make up this section.

ARTICLE 5.40.

Spartanburg County Planning and Development Commission.

§ 14-400.350. **Created, powers, etc.**

Provisions from A. & J. R. 1954 (48) 1416 make up this section.

CHAPTER 9.

CLAIMS AGAINST COUNTIES.

§ 14-413. **Disallowance of claims on other grounds.**

Cited in *McKown v. Daniel*, 217 S. C. 510, 61 S. E. (2d) 163 (1950).

CHAPTER 13.

BUILDINGS AND LANDS GENERALLY.

§ 14-606. Alterations in courthouse or jail.

Nothing in this section tends to make a county board of commissioners independent of the legislature in such matters as contracting liability for the remodeling of the county courthouse in an amount in excess of the legislature's appropriation therefor. *Beacham v. Greenville County*, 218 S. C. 181, 62 S. E. (2d) 92 (1950).

CHAPTER 15.

ABBEVILLE COUNTY.

Article 1.

General Provisions.

Sec.

14-701. Term of office of supervisor.

14-704. Hours of county officers.

ARTICLE 1.

General Provisions.

§ 14-701. Term of office of supervisor.

The term of office of the county supervisor of Abbeville County which began on June 30 1953 shall expire on December 31 1956. Thereafter and commencing January 1 1957 the regular term of office of the supervisor shall be for four years and until his successor qualifies.

1942 Code § 3891; 1932 Code § 3891; 1929 (36) 179; 1952 (47) 1729.

Effect of amendment.—The amendment any following presidential years, instead made the term begin on the first of January of on the first of July in such years.

§ 14-704. Hours of county officers.

Amended by A. & J. R. 1954 (48) 1432.

CHAPTER 16.

AIKEN COUNTY.

Article 1.

General Provisions.

Sec.

14-759. Dumping trash, garbage, etc., sites therefor.

ARTICLE 1.

General Provisions.

§ 14-759. Dumping trash, garbage, etc., sites therefor.

Provisions of A. & J. R. 1953 (48) 443 make up this section.

CHAPTER 18.

ANDERSON COUNTY.

Article 1.

County Government.

Sec.

14-863. Authority of supervisor.

ARTICLE 1.

County Government.

§ 14-863. Authority of supervisor.

The supervisor shall subject to such limitations as may be herein placed upon him, have charge of the buildings, including the county courthouse and the em-

ployment of the janitor thereof, and maintenance of roads, the county chaingang and county prisoners and is charged with the care and supervision of all county property not specifically falling under the care and supervision of the board. The supervisor shall have charge of all road construction and maintenance.

1948 (45) 1985; 1952 (47) 1979.

Effect of amendment.—The amendment courthouse and the employment of the added the phrase “including the county janitor thereof.”

CHAPTER 23.

CALHOUN COUNTY.

Sec.

14-1121. Historical Commission.

§ 14-1121. Historical commission.

Provisions from A. & J. R. 1952 (47) 1911 make up this section.

CHAPTER 24.

CHARLESTON COUNTY.

Article 1.

General Provisions.

Sec.

14-1151. Office hours.

Article 2.

County Government.

14-1169.1. Powers of former county hall commission devolved in county council.

Article 6.

County Hall Commission.

Sec.

14-1241 to 14-1246. [Repealed.]

Article 9.

Township of Sullivan's Island.

14-1291 to 14-1293. Board of Township Commissioners of Sullivan's Island.

14-1295. Recorder.

14-1296. Law enforcement officers.

14-1297. General tax.

ARTICLE 1.

General Provisions.

§ 14-1151. Office hours.

Amended by A. & J. R. 1954 (48) 1431.

ARTICLE 2.

County Government.

§ 14-1169.1. Powers of former county hall commission devolved in county council.

Provisions of A. & J. R. 1953 (48) 49 make up this section.

ARTICLE 6.

County Hall Commission.

§§ 14-1241 to 14-1246. County hall commission.

Repealed by A. & J. R. 1953 (48) 49.

ARTICLE 8.

Township of Folly Island.§ 14-1261. **Territorial limits.**

Folly Island is not a city or town but a township, and this article contains no authorization of suit against the township upon such a cause of action as authorized by § 33-234. *Hinnant v. South Carolina State Highway Dept.*, ... S. C. ... , 83 S. E. (2d) 209 (1954).

Article enacted subject to right of inhabitants to incorporate as a town.—The legislation creating the township government for Folly Island was enacted subject to the right of the inhabitants thereof to incorporate as a town under S. C. Const., Art. 8, and the general law relating to the formation of towns and cities. And

upon incorporation of the area as a town, the powers and functions of the township commissioners would be superseded by the newly-created municipal government, at least to the extent of any conflict between the jurisdiction and powers of the two units of government. *Wagener v. Smith*, 221 S. C. 438, 71 S. E. (2d) 1 (1952).

For cases in which the constitutionality of this article was challenged, but not determined, see *Wagener v. Smith*, 221 S. C. 438, 71 S. E. (2d) 1 (1952); *Wagener v. Johnson*, 223 S. C. 470, 76 S. E. (2d) 611 (1953).

ARTICLE 9.

Township of Sullivan's Island.§§ 14-1291 to 14-1293. **Board of township commissioners of Sullivan's Island.**

Amended by A. & J. R. 1953 (48) 290.

§ 14-1295. **Recorder.**

Added by A. & J. R. 1953 (48) 290.

§ 14-1296. **Law enforcement officers.**

Added by A. & J. R. 1953 (48) 290.

§ 14-1297. **General tax.**

Provisions from A. & J. R. 1952 (47) 2033 make up this section.

CHAPTER 25.

CHEROKEE COUNTY.

Article 2.

Financial Matters Generally.

Sec.

14-1317. [Repealed.]

Sec.

14-1317.1. Annual audit and report; action thereon.

ARTICLE 1.

County Government.§ 14-1304. **Clerk; appointment; term; vacancy; duties.**

Applied in *Jennings v. Green*, 219 S. C. 471, 65 S. E. (2d) 878 (1951).

ARTICLE 2.

Financial Matters Generally.§ 14-1311. **Appropriations not to be exceeded.**

This section does not limit the amounts payable to a sheriff as costs and fees to the amounts appropriated by the county supply act. *McKown v. Daniel*, 217 S. C. 510, 61 S. E. (2d) 163 (1950).

§ 14-1317. **Annual audit.**

Repealed by A. & J. R. 1953 (48) 811.

Cross reference.—See now § 14-1317.1.

§ 14-1317.1. **Annual audit and report; action thereon.**

Provisions from A. & J. R. 1953 (48) 811 make up this section.

CHAPTER 26.
CHESTER COUNTY.

Article 1.
General Provisions.

- Sec.
14-1351.1. Amounts of bonds of officers.
14-1354. Audit.
14-1357. Office hours.

Article 2.
County Government.

- Sec.
14-1362. Board of county directors; elec-
tions; term; vacancy.
14-1365.1. County manager; election;
powers and duties.
14-1366 to 14-1366.4. [Repealed.]
14-1367. Compensation of county em-
ployees.
14-1368. Bonds of county employees.
14-1369. Removal of county employees.
14-1371. Further duties.

ARTICLE 1.
General Provisions.

§ 14-1351.1. **Amounts of bonds of officers.**

The official bonds of the following officials of the county shall be as follows:

Treasurer	\$ 30,000.00
Assistant treasurer	15,000.00
Auditor	5,000.00
Clerk of court	15,000.00
Deputy clerk of court	5,000.00
Probate judge	10,000.00
Sheriff	5,000.00
County manager	20,000.00
Tax collector	10,000.00

1951 (47) 348; 1952 (4) 2127.

Effect of amendment.—The former clerk is now called the county manager and the section has been revised accordingly.

§ 14-1354. **Audits.**

Amended by A. & J. R. 1952 (47) 2127 and A. & J. R. 1953 (48) 449.

§ 14-1356. **Publication of budgets and approval of tax levies.**

The last sentence of this section is unconstitutional. Atty. Gen. Op., Aug. 25, 1954.

County auditor cannot levy tax in absence of approval of county legislative

delegation, in view of this section and § 1 of Chester County Supply Act, (Act No. 804, 1954 (48) 2018). Atty. Gen. Op., Aug. 25, 1954.

§ 14-1357. **Office hours.**

Provisions of A. & J. R. 1952 (47) 2133 make up this section.

ARTICLE 2.
County Government.

§ 14-1362. **Board of county directors; election; term; vacancy.**

There shall be a board of county directors of the county to consist of five members, one resident, qualified elector from each of the said districts, who shall be elected by the qualified electors within the said districts. The members shall be elected in the next general election and shall serve for a two-year term. Such terms shall commence on January first next, following each such general election, and until their successors have been duly elected and qualified. Any vacancy in office shall be filled by special election in the district in which the vacancy occurs.

1942 Code § 4123; 1932 Code § 4123; Civ. C. '22 § 1366; 1916 (29) 851; 1920 (31) 816; 1944 (43) 1418, 2314; 1954 (48) 1850.

Effect of amendment.—The amendment provided for election in lieu of appointment of directors.

§ 14-1365.1. County manager; election; powers and duties; salary.

Provisions of A. & J. R. 1952 (47) 2127 as amended by 1954 (48) 1715 make up this section.

§§ 14-1366 to 14-1366.4. County clerk; powers and duties.

Repealed by A. & J. R. 1952 (47) 2127.

Cross reference.—See now § 14-1365.1.

§ 14-1367. Compensation of county employees.

The compensation and salaries of all employees, agents and servants of the county, other than the county manager, shall be determined and fixed by the board, shall be as low as may be consistent with securing competent employees and efficient service and shall not be more or less than the respective amounts provided in the annual county supply act or authorized and approved in writing by the county legislative delegation.

1942 Code § 4128; 1932 Code § 4128; Civ. C. '22 § 1371; 1916 (29) 851; 1920 (31) 816; 1944 (43) 1418; 1952 (47) 2127.

Effect of amendment.—Formerly the salary of the clerk of the board (now the county manager) was fixed by the board as was also the salary of the road supervisor whose position has now been abolished.

§ 14-1368. Bonds of county employees.

An adequate bond with good and sufficient surety payable to the board of county directors and conditioned for the faithful performance of their duties shall be required of such employees and contracting parties as the board may deem proper.

1942 Code § 4128; 1932 Code § 4128; Civ. C. '22 § 1371; 1916 (29) 851; 1920 (31) 816; 1944 (43) 1418; 1952 (47) 2127.

Effect of amendment.—The section of the board and the supervisor of roads, formerly referred specifically to the clerk positions now abolished.

§ 14-1369. Removal of county employees.

All such employees, except as herein provided, shall be subject to removal or discharge at the discretion of the board.

1942 Code § 4128; 1932 Code § 4128; Civ. C. '22 § 1371; 1916 (29) 851; 1920 (31) 816; 1944 (43) 1418; 1952 (47) 2127; 1954 (48) 1715.

Effect of amendments.—The section to county manager; however the 1954 prior to 1952 amendment referred to the amendment eliminated such office from this clerk of the board whose title was changed section.

§ 14-1371. Further duties.

The board of county directors shall organize and conduct the administration of the county's business, financial and fiscal affairs upon a systematic, economical and efficient basis. To that end the board shall:

(1) Provide and maintain at the county seat an office for the transaction of business, which shall be open as nearly as practicable upon every business day of the year, wherein shall be kept all books of account, contracts, correspondence and other records of official business;

(2) Inaugurate and maintain, under such expert supervision and direction as may be necessary, a system of receiving and disbursing funds and keeping accurate check of the same and of accounting and bookkeeping that will properly safeguard the public interest and accurately determine and show the cost of maintaining all public institutions and public property and of performing all public work of every character;

(3) Maintain and keep in repair and in efficient operative condition all county property and county institutions, and

(4) Advise and cooperate with the county manager for the construction and proper maintenance and upkeep of the county's roads, highways and bridges.

1942 Code § 4126; 1932 Code § 4126; Civ. C. '22 § 1369; 1916 (29) 851; 1920 (31) 816; 1944 (43) 1418; 1952 (47) 2127.

Effect of amendment.—The last paragraph formerly referred to the county supervisor of roads, a position now abolished, instead of the county manager.

CHAPTER 27.

CHESTERFIELD COUNTY

Article 1.

General Provisions.

Sec.
14-1403. Hours of closing county offices.

Article 2.

County Government.

Sec.
14-1423. Bonds of clerks of county board and county treasurer.

ARTICLE 1.

General Provisions.

§ 14-1403. Hours of closing county offices.

Provisions of A. & J. R. 1953 (48) 312 make up this section.

ARTICLE 2.

County Government.

§ 14-1423. Bonds of clerks of county board and county treasurer.

Provisions of A. & J. R. 1952 (47) 2074 make up this section.

CHAPTER 30.

DARLINGTON COUNTY.

Article 2.

County Government.

Sec.
14-1660. [Repealed.]
14-1660.1. County government of Darlington County.
14-1661 to 14-1672. [Repealed.]

Article 3.

Purchases.

14-1681 to 14-1688. [Repealed.]

Article 4.

Financial Matters Generally.

Sec.
14-1691, 14-1692. [Repealed.]
14-1692.1. Publication of monthly financial statements.
14-1692.2. Annual audit.
14-1693. [Repealed.]
14-1694 to 14-1698. [Repealed.]
14-1699. [Repealed.]

ARTICLE 2.

County Government.

§ 14-1660. County government of Darlington County.

Repealed by A. & J. R. 1954 (48) 1724.

Cross reference.—See now § 14-1660.1.

§ 14-1660.1. County government of Darlington County.

Provisions from A. & J. R. 1954 (48) 1724 make up this section.

§§ 14-1661 to 14-1672. County government.

Repealed by A. & J. R. 1952 (47) 2096.

Cross reference.—See now § 14-1660.1.

ARTICLE 3.

*Purchases.***§§ 14-1681 to 14-1688. Purchases.**

Repealed by A. & J. R. 1952 (47) 2096.

Cross reference.—See now § 14-1660.1.

ARTICLE 4.

*Financial Matters Generally.***§§ 14-1691, 14-1692. Warrants, etc.**

Repealed by A. & J. R. 1952 (47) 2096.

Cross reference.—See now § 14-1660.1.

§ 14-1692.1. Publication of monthly financial statements.

Provisions of A. & J. R. 1953 (48) 124 as amended by A. & J. R. 1954 (48) 1724 make up this section.

§ 14-1692.2. Annual audit.

Provisions of § 8 of A. & J. R. 1954 (48) 2080 make up this section.

§ 14-1693. Payment of fees in advance.

Repealed by A. & J. R. 1954 (48) 1724.

Cross reference.—See now § 14-1660.1.

§§ 14-1694 to 14-1698. Claims; publications; borrowing.

Repealed by A. & J. R. 1952 (47) 2096.

Cross reference.—See now § 14-1660.1.

§ 14-1699. Tax for emergency when no supply bill enacted.

Repealed by A. & J. R. 1954 (48) 1724.

Cross reference.—See now § 14-1660.1.

ARTICLE 5.

*Sinking Fund Commission.***§ 14-1701. Appointment of commission; term.**

Editor's note.—A. & J. R. 1952 (47) 2096 abolished office of county manager and devolved duties and powers thereof on county board of directors thereby amending this section; then A. & J. R. 1954 (48) 1724

abolished the board and devolved its duties and powers on county manager created therein; thus net result is that the 1952 Code section is now unchanged and effective.

§ 14-1703. Commission to work under manager.

Editor's note.—A. & J. R. 1952 (47) 2096 abolished office of county manager and devolved duties and powers thereof on county board of directors thereby amending this section; then A. & J. R. 1954 (48) 1724

abolished the board and devolved its duties and powers on county manager created therein; thus net result is that the 1952 Code section is now unchanged and effective.

§ 14-1704. Manager to be secretary of commission.

Editor's note.—A. & J. R. 1952 (47) 2096 abolished office of county manager and devolved duties and powers thereof on county board of directors thereby amending this section; then A. & J. R. 1954 (48) 1724

abolished the board and devolved its duties and powers on county manager created therein; thus net result is that the 1952 Code section is now unchanged and effective.

§ 14-1705. Expenses.

Editor's note.—A. & J. R. 1952 (47) 2096 abolished office of county manager and devolved duties and powers thereof on county board of directors thereby amending this section; then A. & J. R. 1954 (48) 1724

abolished the board and devolved its duties and powers on county manager created therein; thus net result is that the 1952 Code section is now unchanged and effective.

§ 14-1710. Sale or exchange of securities; compromise of obligations, etc.

Editor's note.—A. & J. R. 1952 (47) 2096 abolished office of county manager and devolved duties and powers thereof on county board of directors thereby amending this section; then A. & J. R. 1954 (48) 1724

abolished the board and devolved its duties and powers on county manager created therein; thus net result is that the 1952 Code section is now unchanged and effective.

CHAPTER 33.

EDGEFIELD COUNTY.

Sec.

14-1856. [Repealed.]

§ 14-1856. Supervisor to publish statements.

Repealed by A. & J. R. 1953 (48) 136.

CHAPTER 34.

FAIRFIELD COUNTY.

Sec.

14-1920. Collection and disposition of fees for service of process.

§ 14-1920. Collection and disposition of fees for service of process.

Provisions of A. & J. R. 1953 (48) 238 make up this section.

CHAPTER 37.

GREENVILLE COUNTY.

ARTICLE 2.

County Board of Commissioners.

§ 14-2066. General powers of board.

The General Assembly has not delegated legislative powers to the Greenville board as it has in the case of Charleston. *Beacham v. Greenville County*, 218 S. C. 181, 62 S. E. (2d) 92 (1950).

Contracting liability for remodeling of county courthouse.—Nothing in the law creating the Greenville county board of commissioners and prescribing its pow-

ers and duties tends to make the board independent of the legislature in such matters as contracting liability for the remodeling of the county courthouse in an amount in excess of the legislature's appropriation therefor. *Beacham v. Greenville County*, 218 S. C. 181, 62 S. E. (2d) 92 (1950).

CHAPTER 40.

HORRY COUNTY.

Article 1.

General Provisions.

Sec.

14-2303.1. Issuance of receipts for moneys.

Article 2.

County Board of Commissioners.

Sec.

14-23117.1. Same; report to legislative delegation and submit proposed supply bill.

ARTICLE 1.

General Provisions.

§ 14-2303.1. Issuance of receipts for moneys.

Provisions from § 2, A. & J. R. 1952 (47) 2156 make up this section.

ARTICLE 2.

*County Board of Commissioners.***§ 14-2317.1. Same; report to legislative delegation and submit proposed supply bill.**

Provisions from § 13 of A. & J. R. 1954 (48) 2270 make up this section.

CHAPTER 41.

JASPER COUNTY

Article 1.

General Provisions.

Sec.

14-2402. Term of office of supervisor.

§ 14-2402. Term of office of supervisor.

The term of office of the county supervisor shall be for four years and until his successor shall have been elected and qualified.

1942 Code § 3818; 1932 Code § 3818; Civ. C. '22 § 1058; Civ. C. '12 § 935; Civ. C. '02 § 753; R. S. 643; 1893 (21) 482; 1899 (23) 1; 1908 (25) 1350, 1186, 1912; 1909 (26) 124, 180; 1910 (26) 685, 687, 699, 700; 1911 (27) 62; 1913 (27) 121, 146; 1915 (29) 420, 515; 1916 (29) 793, 798, 859; 1918 (30) 836; 1921 (32) 60, 102; 1922 (32) 964; 1924 (33) 1075; 1925 (34) 122; 1934 (38) 1552; 1937 (40) 37; 1940 (41) 1659; 1941 (42) 253; 1954 (48) 1451.

Effect of amendment.—Amendment increased term to four years from two years.

CHAPTER 42.

KERSHAW COUNTY.

Article 1.

General Provisions.

Sec.

14-2450. County governing board and county administrator; purchases.

14-2451 to 14-2458. [Repealed.]

14-2458.1. Deposit of public funds.

14-2458.2, 14-2458.3. [Repealed.]

14-2458.4. Bonds to be exchanged for county bonds.

Sec.

14-2458.5. Penalties.

14-2459 to 14-2463. [Repealed.]

14-2466.1. Match funds of unincorporated divisions purchase fire-fighting equipment.

Article 2.

Sinking Funds.

14-2471 to 14-2474. [Repealed.]

ARTICLE 1.

*General Provisions.***§ 14-2450. County governing board and county administrator; purchases.**

Provisions of A. & J. R. 1953 (48) 486 make up this section.

§§ 14-2451 to 14-2458. Board of directors; clerk; civil engineer; custody of property, etc.

Repealed by A. & J. R. 1953 (48) 486.

Cross reference.—See now § 14-2450.

§ 14-2458.1. Deposit of public funds.

Amended by A. & J. R. 1953 (48) 162.

§§ 14-2458.2, 14-2458.3. Investment of sinking funds and sale of bonds of such funds.

Repealed by A. & J. R. 1953 (48) 162.

§ 14-2458.4. Bonds to be exchanged for county bonds.

Amended by A. & J. R. 1953 (48) 131.

§ 14-2458.5. Penalties.

Failure, refusal or neglect to comply with the provisions of §§ 14-2458.1 or 14-2458.4 shall be deemed misconduct in office and the Governor, upon his own motion or upon complaint of any person, when satisfied that the terms of any of said sections have been violated, shall remove the offending officer summarily from office.

1942 Code § 2866-3; 1932 Code § 2818; 1931 (37) 279; 1953 (48) 162.

Effect of amendment. — Prior to the 14-2458.2 and 14-2458.3 which have now amendment the section also referred to §§ been repealed.

§§ 14-2459 to 14-2463. Purchases; warrants; arbitration board, etc.

Repealed by A. & J. R. 1953 (48) 486.

§ 14-2466.1. Match funds of unincorporated subdivisions for purchase of fire-fighting equipment.

Provisions of A. & J. R. 1954 (48) 2286 make up this section.

ARTICLE 2.

*Sinking Funds.***§§ 14-2471 to 14-2474. Sinking funds.**

Repealed by A. & J. R. 1953 (48) 130.

CHAPTER 43.

LANCASTER COUNTY.

Article 1.

General Provisions.

Sec.

14-2563.1. Purchase and sale of real estate.

14-2569.1. Match funds of subdivisions for purchase of fire-fighting equipment.

Article 3.

Historical Commission.

Sec.

14-2591. Creation, duties, etc.

ARTICLE 1.

*General Provisions.***§ 14-2563.1. Purchase and sale of real estate.**

Provisions from A. & J. R. 1952 (47) 1876 make up this section.

§ 14-2569.1. Match funds of subdivisions for purchase of fire-fighting equipment.

Provisions of A. & J. R. 1954 (48) 2312 make up this section.

ARTICLE 3.

*Historical Commission.***§ 14-2591. Creation, duties, etc.**

Provisions from A. & J. R. 1953 (48) 148 make up this section.

CHAPTER 44.

LAURENS COUNTY.

Sec.

14-2610. Group hospitalization and medical insurance for employees.

§ 14-2607. Section 10-1604 not affected.

Editor's note. — The reference to "this section" in § 14-2607 should have been to §§ 14-2605 and 14-2606.

§ 14-2610. **Group hospitalization and medical insurance for employees.**
Provisions of A. & J. R. 1954 (48) 2332 make up this section.

CHAPTER 47.

MARION COUNTY.

Sec.

14-2801. Board of county commissioners.

§ 14-2801. **Board of county commissioners.**

Amended by A. & J. R. 1953 (48) 75.

CHAPTER 50.

NEWBERRY COUNTY.

Article 1.

General Provisions.

Sec.

14-2964.1. Superintendent of buildings and grounds.

14-2967. Bonds of officers.

ARTICLE 1.

General Provisions.§ 14-2964.1. **Superintendent of buildings and grounds.**

There is hereby created in *Newberry* County the office of county superintendent of buildings and grounds. The legislative delegation shall appoint a county superintendent of buildings and grounds to serve for a term of two years and until his successor is appointed and qualified. He shall look after the public buildings and grounds of the county under the supervision and direction of the senior deputy sheriff of the county and he shall be paid such compensation as may be provided in the annual county supply act.

1954 (48) 2411.

§ 14-2967. **Bonds of officers.**

Amended by A. & J. R. 1953 (48) 297.

CHAPTER 51.

OCONEE COUNTY.

Article 1.

General Provisions.

Sec.

14-3000. County government.

14-3008. Bonds of certain county officers.

14-3009. Funds available for salary and bond premium payments.

Article 2.

County Advisory Board.

Sec.

14-3021, 14-3023, 14-3023.1 [Repealed.]

14-3024 [Repealed.]

Article 3.

County Comptroller.

14-3035. [Repealed.]

14-3037. Duties.

ARTICLE 1.

General Provisions.§ 14-3000. **County government.**

Provisions from A. & J. R. 1954 (48) 1435 make up this section.

§ 14-3008. Bonds of certain county officers.

The following officers shall be bonded as follows: treasurer forty thousand dollars, and sheriff fifteen thousand dollars.

1942 Code § 4689; 1932 Code § 4689; 1922 (32) 910; 1923 (33) 793; 1929 (36) 7, 197, 1053; 1933 (38) 334; 1936 (39) 1625; 1954 (48) 1435.

Effect of amendment.—"Supervisor fifteen thousand dollars" was eliminated by A. & J. R. 1954 (48) 1435.

§ 14-3009. Funds available for salary and bond premium payments.

When not otherwise provided for, the county board shall pay the salaries and the bond premiums or any part thereof of any county official from the contingent fund, or, if that be not sufficient, the county auditor shall levy an annual tax on property sufficient to pay the same and the revenues therefrom are hereby appropriated to that purpose.

1942 Code § 4689; 1932 Code § 4689; 1922 (32) 910; 1923 (33) 793; 1929 (36) 7, 197, 1053; 1933 (38) 334; 1936 (39) 1625; 1954 (48) 1435.

Effect of amendment.—"Supervisor" was changed to "county board" by A. & J. R. 1954 (48) 1435.

ARTICLE 2.*County Advisory Board.***§ 14-3021. County advisory board; appointment and terms of office.**

Cross reference.—See now § 14-3000.

Repealed by A. & J. R. 1954 (48) 1435.

§ 14-3023. Duties and powers of board.

Cross reference.—See now § 14-3000.

Repealed by A. & J. R. 1954 (48) 1435.

§ 14-3023.1. Inventory and annual audit; prerequisite to sale.

Cross reference.—See now § 14-3000.

Repealed by A. & J. R. 1954 (48) 1435.

§ 14-3024. Annual financial statement of board.

Repealed by A. & J. R. 1954 (48) 1435.

ARTICLE 3.*County Comptroller.***§ 14-3035. Comptroller's office clerk to supervisor.**

Repealed by A. & J. R. 1954 (48) 1435.

§ 14-3037. Duties.

(8) Enforce the law that no warrant or voucher shall be honored and no check issued in excess of the moneys provided for any particular purpose, and to this end shall report to the grand jury all overdrafts against any account and the officer responsible for the same and notify the county legislative delegation, the treasurer and the county board or superintendent of education accordingly as the county board or superintendent of education issues vouchers against the fund.

1942 Code § 4694; 1933 (38) 66, 162; 1934 (38) 1449; 1954 (48) 1435.

Effect of amendment.—"Supervisor" was changed to "county board" in two instances in above (8) by A. & J. R. (48) 1435. The section otherwise remains unchanged.

CHAPTER 53.
PICKENS COUNTY.

Article 1.
Pickens County.

Sec.

14-3157. Office hours for county officers.

ARTICLE 1.
General Provisions.

§ 14-3157. **Office hours for county officers.**

Amended by A. & J. R. 1953 (48) 12.

CHAPTER 54.
RICHLAND COUNTY.

Article 1.
General Provisions.

Sec.

14-3201.1. Terms of office of commissioners and supervisor.

ARTICLE 1.
General Provisions.

§ 14-3201.1. **Terms of office of commissioners and supervisor.**

The terms of office of the supervisor and each member of the county board of commissioners in *Richland County* shall commence on July 1st of each year preceding the year of a presidential election.

1952 (47) 1935.

CHAPTER 56.
SPARTANBURG COUNTY.*

Article 1.
General Provisions.

Sec.

14-3307. [Repealed.]

Sec.

14-3302. General powers and duties of board.

Article 3.
Financial Matters Generally.*

ARTICLE 1.

General Provisions.

§ 14-3302. **General powers and duties of board.**

* * * The board shall also review, investigate and recommend to the legislative delegation all items concerning the finances and requests for funds not included in the annual county appropriation act.

1942 Code § 4755; 1932 Code § 4755; Civ. C. '22 § 1886; 1925 (34) 296; 1937 (40) 482; 1954 (48) 1824.

Effect of amendment.—A m e n d m e n t added above sentence. Section otherwise effective.

§ 14-3307. **Purchase of supplies, etc.**

Repealed by A. & J. R. 1952 (47) 1694.

ARTICLE 3.
*Financial Matters Generally.**

* Editor's note.—Attention is called to provisions in A. & J. R. 1954 (48) 2563 (Spartanburg County Supply Act) on page 2578 relating to segregation and disbursement of funds received from State Highway Department and also on page 2585 relating filing of certifications by municipalities for certain funds. These provisions indicate permanency.

CHAPTER 57.
SUMTER COUNTY.

Sec.
14-3420.1. Publication of receipts and dis-
bursements annually.

§ 14-3420.1. **Publication of receipts and disbursements annually.**

Provisions of A. & J. R. 1953 (48) 1256 make up this section.

CHAPTER 58.
UNION COUNTY.*

Article 2.
Governing Body.

Sec.
14-3461. Election and terms of township
commissioners.
14-3465. [Repealed.]

Sec.

14-3466. Appointment of certain county
employees.
14-3466.1. Operation of county home and
chain gang.

ARTICLE 2.
Governing Body.

§ 14-3461. **Election and term of township commissioners.**

Amended by A. & J. R. 1953 (48) 247.

§ 14-3465. **County attorney and county physician.**

Repealed by A. & J. R. 1953 (48) 407.

§ 14-3466. **Appointment of certain county employees.**

Repealed by A. & J. R. 1953 (48) 407.

§ 14-3466.1. **Operation of county home and chain gang.**

Provisions of § 3 of A. & J. R. 1953 (48) 407 make up this section.

CHAPTER 60.
YORK COUNTY.

Article 2.
**Salaries in Lieu of Fees for Certain
Officers.**

Sec.
14-3625. Collection of fees by probate
judge.

ARTICLE 1.
Supervisor and Commissioners.

§ 14-3602. **Recommendation to Governor.**

Quoted in *Glasscock v. Bradford*, 218
S. C. 458, 63 S. E. (2d) 166 (1951).

§ 14-3607. **Appointment of members of board; term and salary.**

Office of county director to be filled by
executive appointment.—This article is
too plain to admit of any other construc-
tion than that the office of York County
director shall be filled by executive ap-
pointment, not election. *Glasscock v.*
Bradford, 218 S. C. 458, 63 S. E. (2d)
166 (1951), holding it unnecessary in this
proceeding to determine how the direc-
tors may be nominated in compliance
with § 14-3608, or whether it may be
validly done.

This section requires the Senator to be
included in an effective majority of the
legislative delegation for the purpose of
recommending appointees to the county
board of directors, if none be nominated

by primary. *Bradford v. Byrnes*, 221 S.
C. 255, 70 S. E. (2d) 228 (1952).

And this plan is not inconsistent with
our constitutional scheme of government
by "checks and balances." The Senator
cannot make a legal recommendation
alone; nor can the representatives, or a
majority of them. *Bradford v. Byrnes*,
221 S. C. 255, 70 S. E. (2d) 228 (1952).

Effect of failure of legislative delega-
tion to make recommendations.—The
long-continued failure of a majority, in-
cluding the Senator, of the York County
legislative delegation to recommend per-
sons for appointment as members of the
board pursuant to the terms of this sec-
tion created vacancies in the offices of

* Editor's note.—Attention is called to the provisions of § 18 of A. & J. R. 1954 (48)
2612 (Union County Supply Act for 1954-55) which provides that the said act shall con-
tinue in the future until changed by a repealing act.

county directors and gave rise to the power of the Governor to appoint under the general laws, §§ 14-302 and 1-122.

Bradford v. Byrnes, 221 S. C. 255, 70 S. E. (2d) 228 (1952).

§ 14-3608. Nomination of members.

"Nomination" in general election ineffectual.—Attempted "nomination" of members of the York County board of directors in the general election held ineffec-

tual. Glasscock v. Bradford, 218 S. C. 458, 63 S. E. (2d) 166 (1951). See note to § 14-3607.

ARTICLE 2.

Salaries in Lieu of Fees for Certain Officers.

§ 14-3625. Collection of fees by probate judge.

All fees and licenses payable to the probate judge shall be collected by him in advance. The probate judge shall keep in duplicate accurately and completely itemized accounts of all fees and licenses and on or before the tenth day of each calendar month he shall deliver one copy sworn to by him to the treasurer and shall pay to the treasurer in full all such fees and licenses collected during the preceding month, which funds so received by the county treasurer shall be placed to the credit of the general county fund. The fee for searches by the probate judge is hereby abolished in York County.

1942 Code § 4906; 1932 (37) 1214; 1933 (38) 45, 49, 333; 1934 (38) 1345; 1954 (48) 1747.

Effect of amendment.—Provision for payment of 50¢ for marriage license fee for school fund eliminated by A. & J. R. 1954 (48) 1747.

Editor's note.—Last sentence in this section surplusage in view of § 27-320.

Title 15.

Courts.

- Chap. 3. The Circuit Courts, §§ 15-262 to 15-286.
 4. The Probate Courts, §§ 15-410.1 to 15-501.
 5. The County Courts, §§ 15-669 to 15-814.
 6. Municipal Courts, §§ 15-1001 to 15-1031.
 7.1. Domestic Relations Court in Laurens County, §§ 15-1281.1 to 15-1293.1.
 7.2. Juvenile and Domestic Relations Court for Greenville County, § 15-1297.
 8. Children's Court, § 15-1301 to 15-1382.
 9.1. The Civil and Criminal Court of Darlington County, §§ 15-1580.1 to 15-1599.3.
 10. The Civil Court of Florence, § 15-1602.1.
 10.1. The Civil Court of Horry, § 15-1621.
 10.11. The Civil and Domestic Relations Court of Sumter County, § 15-1650.
 11. Clerks of Court, §§ 15-1764.1 to 15-1782.1.
 12. Masters, §§ 15-1801 to 15-1817.7.
 13. Stenographers, Auctioneers, Bailiffs and Other Court Attaches, § 15-1913.

CHAPTER 1.

GENERAL PROVISIONS.

§ 15.1. Definition of real property.

Cited in McDonald v. Welborn, 220 S. C. 10, 66 S. E. (2d) 327 (1951).

CHAPTER 2.
THE SUPREME COURT.

ARTICLE 2.
Jurisdiction, Duties and Procedure.

§ 15-121. Original jurisdiction of Supreme Court.

Writ of habeas corpus can be addressed to Supreme Court in its original jurisdiction only under unusual circumstances, but such presented in this instance. *State v. White-*
ner, ... S. C. . . . , 81 S. E. (2d) 784
(1954).

§ 15-123. Appellate jurisdiction in law cases.

I. GENERAL CONSIDERATION. *S. E. (2d) 641 (1951); Cord v. E. H.*
Cited in Crotts v. Fletcher Motor Co., Hines Const. Co., 220 S. C. 356, 67 S. E.
219 S. C. 204, 64 S. E. (2d) 540 (1951); (2d) 677 (1951).
Johnson v. Abney Mills, 219 S. C. 231, 64

CHAPTER 3.
THE CIRCUIT COURTS.

Article 4.	
Circuits and Terms of Court.	
Sec.	Sec.
15-262. Terms of court in first circuit.	15-269. Terms of court in fifth circuit.
15-263. Terms of court in second circuit.	15-274. Terms of court in sixth circuit.
15-264. Terms of court in third circuit.	15-277. Terms of court in eighth circuit.
15-266. Terms of court in fourth circuit.	15-278. Terms of court in ninth circuit.
15-267. May term of common pleas court for Dillon County.	15-279. Terms of court in tenth circuit.
	15-280. Terms of court in eleventh circuit.
	15-286. Terms of court in fourteenth circuit.

ARTICLE 4.
Circuits and Terms of Court.

§ 15-262. Terms of court in first circuit.

(1) *Calhoun County.*—The court of general sessions for *Calhoun County* shall be held at *St. Matthews* on the fourth Monday in May, the fourth Monday in September and the first Monday in February. The court of common pleas for said county shall be held at *St. Matthews* on the fourth Monday in April and the first Monday in December. And in addition to the terms of the court of common pleas above provided for there shall be terms of such court during each of the weeks in which there are fixed terms of court for the court of general sessions and immediately upon the conclusion of the business of the court of general sessions such court shall open and the petit jurors drawn to serve in the court of general sessions shall serve as petit jurors in the court of common pleas and any and all business may be transacted as at any other term of the court of common pleas.

1942 Code § 51; 1932 Code § 51; Civ. P. '22 § 49; Civ. P. '12 § 18; Civ. P. '02 § 18; 1886 (19) 473; 1898 (22) 684; 1901 (23) 624; 1908 (25) 1010; 1909 (26) 230; 1911 (27) 88; 1912 (28) 771, 772; 1913 (28) 117; 1915 (29) 387, 547; 1916 (29) 690; 1917 (30) 145; 1919 (31) 238; 1921 (32) 56; 1923 (33) 103; 1925 (34) 59; 1926 (34) 935; 1928 (35) 1204; 1931 (37) 123; 1934 (38) 1260; 1939 (41) 279; 1941 (42) 118; 1949 (46) 114; 1953 (48) 34.

Effect of amendment.—The amendment substituted a term beginning the first Monday in December for one formerly beginning the first Monday in November. The introductory sentence of the section and paragraphs (2) and (3) were not affected by the amendment and are therefore not set forth above.

§ 15-263. Terms of court in second circuit.

(2) *Bamberg County.*—The court of general sessions for *Bamberg County* shall be held at *Bamberg* on the third Monday of February and on the second Monday in September, each for one week. The court of common pleas for said county shall

be held at *Bamberg* on the third Monday in April for two weeks, on the second Monday in July for one week and on the fourth Monday in October for two weeks.

1942 Code § 52; Civ. P. '22 § 50; Civ. P. '12 § 19; Civ. P. '02 § 19; 1897 (22) 444; 1910 (26) 542; 1911 (27) 87; 1912 (27) 770; 1914 (28) 607; 1915 (29) 198; 1916 (29) 691, 699; 1917 (30) 135; 1919 (31) 43; 1920 (31) 855; 1924 (33) 930; 1926 (34) 991; 1933 (38) 320; 1935 (39) 308; 1937 (40) 573; 1941 (42) 118; 1948 (45) 2067; 1949 (46) 9; 1950 (46) 2290; 1951 (47) 31; 1953 (48) 22.

Effect of amendment.—The amendment eliminated a term of the court of common pleas that formerly began on the fourth Monday in June. The introductory sentence of the section and paragraphs (1) and (3) were not affected by the amendment and are therefore not set forth above.

§ 15-264. Terms of court in third circuit.

The courts of the third judicial circuit shall be held as hereinafter provided.

(1) *Clarendon County*.—The court of general sessions for *Clarendon County* shall be held at *Manning* on the fourth Monday in January, the third Monday in June and the second Monday in September, each for one week. The court of common pleas for said county shall be held at *Manning* on the first Monday in March for two weeks, the fourth Monday in April for one week, the fourth Monday in June for one week and the third Monday in October for two weeks.

(2) *Lee County*.—The court of general sessions for *Lee County* shall be held at *Bishopville* on the first Monday in February, on the second Monday in June and on the first Tuesday after the first Monday in September, each for one week. The court of common pleas for said county shall be held at *Bishopville* on the fourth Monday in March for one week, the first Monday in May for one week, the fourth Monday in September for one week and the fourth Monday in November for two weeks. But there shall be no jury trials at the summer term of the court of general sessions unless a majority of the *Lee County Bar Association* deems it advisable and so notifies the judge of said circuit.

(3) *Sumter County*.—The court of general sessions for *Sumter County* shall be held at *Sumter* on the second Monday in February for two weeks, on the third Monday in May for one week, on the first Monday in November for one week and on the second Monday in December for one week. The court of common pleas for said county shall be held at *Sumter* on the first Monday in January for three weeks, on the first Monday in April for three weeks, on the first Monday after the fourth Monday in September for two weeks and on the second Monday in November for one week.

1942 Code § 53; 1932 Code § 53; Civ. P. '22 § 51; Civ. P. '12 § 20; Civ. P. '02 § 18; 1884 (18) 886; 1896 (22) 22; 1900 (23) 311; 1902 (23) 1194; 1910 (26) 541; 1914 (28) 531; 1916 (29) 693; 1924 (33) 1187; 1928 (35) 1288; 1929 (36) 79; 1931 (37) 320, 376; 1934 (38) 1466; 1936 (39) 1481; 1939 (41) 184; 1940 (41) 1771; 1941 (42) 118; 1944 (43) 1207; 1951 (47) 250; 1952 (47) 1939; 1953 (48) 168; 1954 (48) 1432.

Effect of amendments.—The 1952 amendment (1) changed a term of the court of common pleas of *Clarendon County* from the fourth Monday in June to the fourth Monday in April, (2) reduced to one week the length of the May term of the court of common pleas of *Lee County* and added a term of one week for said court commencing on the fourth Monday in March, (3) reduced to one week the length of the November term of the court of general sessions of *Sumter County*, eliminated the July term of said court and added terms of said court beginning on the third Monday of May and December of one week each, and (4) changed the January term of the court of common pleas of *Sumter County* from one of two weeks commencing on the second Monday to

one of three weeks commencing on the first Monday, changed the commencement of the April term of said court from the second to the first Monday, eliminated the July term of said court and reduced the December term from two weeks to one.

The 1953 amendment added a term of the court of common pleas of *Clarendon County* beginning on the fourth Monday in June.

1954 amendment changed December term of general sessions to second week from the third and eliminated the December term of common pleas.

Paragraph (4) of the original section, relating to the courts of *Williamsburg County*, was not affected by either amendment and therefore is not set out above.

§ 15-266. Terms of court in fourth circuit.

(2) *Courts of Common Pleas*: At *Chesterfield* for *Chesterfield* County on the first Monday in January, the third Monday in February, the third Monday in April, the fourth Monday in May, the first Monday in September, the first Monday in October and the fourth Monday in November; at *Bennettsville* for *Marlboro* County on the third Monday in January, the first Monday in March, the first Monday in April, the third Monday in May, the second Monday in October and the first Monday in December; at *Darlington* for *Darlington* County on the fourth Monday in January, the fourth Monday in March, the second Monday in April, the second Monday in May, the third Monday in September and the second Monday in December; at *Dillon* for *Dillon* County on the fourth Monday in February, the first Monday in May, the fourth Monday in September and the third Monday in October.

1942 Code § 54; 1932 Code § 54; Civ. P. '22 § 52; Civ. P. '12 § 21; Civ. P. '02 § 21; 1883 (18) 305; 1887 (19) 999; 1897 (22) 404; 1901 (23) 627; 1910 (26) 544; 1911 (27) 80; 1922 (32) 780; 1924 (33) 932; 1925 (34) 233; 1932 (37) 1213; 1934 (38) 1400; 1935 (39) 440; 1937 (40) 573; 1940 (41) 1646, 1754, 1844; 1941 (42) 118, 151; 1944 (43) 1359; 1950 (46) 1983; 1951 (47) 51; 1953 (48) 32.

Effect of amendment.—The amendment added a term of court for Dillon County beginning on the third Monday in October. The introductory sentence of the section and paragraph (1) thereof were not affected by the amendment and are therefore not set forth above.

§ 15-267. May term of common pleas court for Dillon County.

The terms of the common pleas court for *Dillon* County which begin on the first Monday in May and the fourth Monday in September shall automatically be called off unless a meeting of the Dillon County Bar be held at least two weeks before each such term is to begin and at least one-third of the members of said Bar attending such meeting and having cases to be tried at such term vote that such term be held. Any two members of the Bar may call such meeting on not less than two days' notice. When a term of court is not to be held, the clerk of court shall notify the judge assigned to hold it.

1950 (46) 1983; 1953 (48) 26.

Effect of amendment. — The section formerly applied only to the term of court beginning on the first Monday in May.

§ 15-269. Terms of court in fifth circuit.

(3) *Additional Terms for Certain Matters.*—In addition to the terms of court hereinbefore set forth, there shall be held additional terms of court, without juries, to hear equity matters and all matters not requiring jury trials, the same to be held as follows:

(a) *Richland* County: On the third Monday in February, on the second Monday in June and on the fourth Monday in October, each for one week; and

(b) *Kershaw* County: On the second Monday in January, on the second Monday in April and on the second Monday in September, each for one week.

The terms of court provided for in this paragraph (3) shall be presided over by a judge other than the regularly assigned judge, to be selected by the Chief Justice from the regular or retired circuit judges, or he may select a special judge, qualified by law, to hold such terms. The terms of court provided for in this paragraph (3), if found at any time to be unnecessary, shall be called off as the law now provides for other terms.

1942 Code § 55; 1932 Code §§ 55, 986; Civ. P. '22 §§ 53, 77; Civ. P. '12 § 22; Civ. P. '02 § 22; 1877 (16) 299; 1896 (22) 24; 1899 (23) 33; 1910 (26) 541; 1912 (27) 768; 1913 (28) 13; 1915 (29) 175; 1919 (31) 18; 1922 (32) 799; 1924 (33) 933; 1926 (34) 991, 999; 1938 (40) 1918; 1939 (41) 424; 1940 (41) 1699; 1941 (42) 118; 1948 (45) 1781; 1953 (48) 187.

Effect of amendment.—The phrase “or he may select a special judge, qualified by law, to hold such terms,” at the end of the next to the last sentence, is new. The in-

troductory sentence of the section and paragraphs (1) and (2) were not affected by the amendment and are therefore not set forth above.

§ 15-274. Terms of court in sixth circuit.

(2) *Fairfield County.*—The court of general sessions for *Fairfield County* shall be held at *Winnsboro* on the first Monday in February, the second Monday in June and the Tuesday following the first Monday in September. The court of common pleas for said county shall be held at *Winnsboro* on the second Monday in March, the fourth Monday in April, the second Monday in October and the third Monday in November.

(4) *York County.*—The court of general sessions for *York County* shall be held at *York* on the first Monday in January, the third Monday in March, the first Monday in May, the second Monday in July, the second Monday in September, the fourth Monday in November, the fifth Monday in November when there is a fifth Monday in November, the first Monday in December and the third Monday in December. The court of common pleas for said county shall be held at *York* on the fourth Monday in January, the fourth Monday in February, the fourth Monday in March, the third Monday in April, the first Monday in June, the fourth Monday in September and the second Monday in November. But a term of the court of common pleas for said county shall follow immediately upon the adjournment of any term of the court of general sessions and when such a term so follows in the same week in which a term of the court of general sessions has been held the venire called for the court of general sessions shall also serve as the venire for the court of common pleas.

1942 Code § 56; 1932 Code § 56; Civ. P. '22 § 54; Civ. P. '12 § 23; Civ. P. '02 § 23; 1885 (19) 223; 1899 (22) 34; 1900 (23) 312; 1907 (25) 617; 1911 (27) 64; 1916 (29) 698; 1922 (32) 838; 1925 (34) 29; 1928 (35) 1216; 1929 (36) 41; 1930 (36) 1098, 1264; 1933 (38) 136; 1934 (38) 1199, 1254; 1935 (39) 237; 1937 (40) 452; 1938 (40) 1698; 1941 (42) 118; 1944 (43) 1351; 1948 (45) 1691; 1949 (46) 254, 338, 571; 1950 (46) 2222; 1953 (48) 253.

Effect of amendment.—The amendment changed the beginning of a term of the court of common pleas for *Fairfield County* from the third to the second Monday in March and changed a term of the court of general sessions of *York County* from the

second to the third Monday in March. The introductory sentence of the section and paragraphs (1) and (3) were not affected by the amendment and are therefore not set forth above.

§ 15-277. Terms of court in eighth circuit.

(2) *Greenwood County.*—The court of general sessions for *Greenwood County* shall be held at *Greenwood* on the second Monday in January, the second Monday in April, the fourth Monday in June and the second Monday in September. The court of common pleas for said county shall be held at *Greenwood* on the first Monday in March, the third Monday in April, the fourth Monday in May for one week, the first Monday after the fourth Monday in September, and the third Monday in November.

(3) *Laurens County.*—The court of general sessions for *Laurens County* shall be held at *Laurens* on the third Monday in February, the second Monday in June, the fourth Monday in September and the second Monday in November. The court of common pleas for said county shall be held at *Laurens* on the second Monday in March, the second Monday in May and the fourth Monday in October for two weeks each.

(4) *Newberry County.*—The court of general sessions for *Newberry County* shall be held at *Newberry* on the third Monday in March, on the third Monday in June, on the third Monday in September and on the first Monday in December, in each case for one week. The court of common pleas for said county shall be held at *Newberry* on the fourth Monday in January, on the first Monday in May

for equity only, on the fourth Monday in April, on the third Monday in October and on the fourth Monday in November, in each case for one week.

1942 Code § 58; 1932 Code § 58; Civ. P. '22 § 56; Civ. P. '12 § 25; Civ. P. '02 §§ 24, 25; 1889 (20) 360; 1891 (20) 1113; 1896 (22) 26; 1899 (23) 37; 1900 (23) 314; 1901 (23) 629; 1910 (26) 538; 1916 (29) 696; 1919 (31) 113; 1920 (31) 807; 1922 (32) 1039; 1925 (34) 277; 1928 (35) 1152; 1932 (37) 1390; 1934 (38) 1446; 1939 (41) 485; 1941 (42) 118, 129; 1947 (45) 521; 1951 (47) 292; 1953 (48) 311; 1954 (48) 1538.

Effect of amendments.—The 1953 amendment added a new term of the court of common pleas for Greenwood County beginning on the fourth Monday in May and changed the date for beginning the November term from the first to the third Monday. It also reduced the March and May terms of the court of common pleas of

Laurens County from three weeks to two weeks.

The 1954 amendment added the May equity term of common pleas.

The introductory sentence of the section and paragraph (1) thereof was not affected by the amendments and is therefore not set forth above.

§ 15-278. Terms of court in ninth circuit.

(2) *Charleston County*.—The court of general sessions for *Charleston County* shall be held at *Charleston* on the first Monday in January for one week, on the first Monday in March for two weeks, on the first Monday in June for two weeks, on the second Monday in September for two weeks and on the first Monday in December for two weeks. The court of common pleas for said county shall be held at *Charleston* on the second Monday in January for one week for the disposal of motions, equity matters and any other matters not requiring the attendance of a jury, on the first Monday in February for four weeks for the disposal of jury matters, on the fourth Monday in March for five weeks for jury matters and on the third Monday in October for six weeks, the first of which shall be for the disposal of motions, equity matters and any other matters not requiring the attendance of a jury and the remaining five weeks for the disposal of jury matters.

The first day of each term of the court of common pleas provided for in *Charleston County* shall be set aside for pre-trial motions and all matters not requiring a jury, except the two terms in *Charleston County* of which an entire week is designated for that purpose. When the first day of a term of the court of common pleas is set aside for pre-trial motions and matters not requiring a jury, the jury for such court of common pleas shall not be summoned to appear on the first day of the term but shall be summoned to appear on the second day of the term.

1942 Code § 59; 1932 Code § 59; Civ. P. '22 § 57; Civ. P. '12 § 26; Civ. P. '02 § 18; 1884 (18) 686; 1887 (19) 987; 1894 (21) 717; 1898 (22) 683; 1899 (23) 258; 1900 (23) 309; 1909 (26) 163; 1913 (28) 19, 31; 1915 (29) 179; 1917 (30) 138; 1920 (31) 725; 1921 (32) 203; 1923 (33) 128; 1925 (34) 280; 1926 (34) 1047, 1048; 1930 (36) 1135; 1931 (37) 245; 1941 (42) 118; 1947 (45) 525; 1953 (48) 64; 1954 (48) 1446.

Effect of amendments.—The 1953 amendment rewrote the second sentence of paragraph (2) and added the last paragraph above.

The 1954 amendment eliminated one week for non-jury matters during October

term and added one week for jury matters during such term.

The introductory sentence of the section and paragraph (1) were not affected by the amendments and are therefore not set forth above.

§ 15-279. Terms in tenth circuit.

The courts of the tenth judicial circuit shall be held as hereinafter provided.

(1) *Anderson County*.—The court of general sessions for *Anderson County* shall be held at *Anderson* on the first Monday in February, the second Monday in May, the first Monday in September and said third Monday in November. The court of common pleas for the county shall be held at *Anderson* on the second Monday in January, the second Monday in March, the second Monday in April, the second Monday in June, the first Monday in October and the first Monday in December.

(2) *Oconee County*.—The court of general sessions for *Oconee County* shall be held at *Walhalla* on the fourth Monday in February, the fourth Monday in June

and the first Monday in November. The court of common pleas for said county shall be held at *Walhalla* on the fourth Monday in May and the third Monday in September.

1942 Code § 60; 1932 Code § 60; Civ. P. '22 § 58; Civ. P. '12 § 27; Civ. P. '02 § 25; 1908 (25) 1013; 1912 (27) 549; 1913 (28) 138; 1914 (28) 608; 1941 (42) 118; 1954 (48) 1749.

Effect of amendment.—The 1954 Amendment in Anderson County as to common pleas changed (1) the June term to the second Monday from the third Monday and (2) added a new term on the second Monday in January, and in Oconee County as to general sessions changed (1) the first Monday in March term to the fourth

Monday in February and (2) the first Monday in July term to the fourth Monday in June and as to common pleas (1) the fourth Monday in March term to the fourth Monday in May and (2) the third Monday in October term to the third Monday in September and (3) eliminated the term in July.

§ 15-280. Terms of court in eleventh circuit.

(2) *McCormick County*.—The court of general sessions for *McCormick County* shall be held at *McCormick* on the first Monday in February, the second Monday in June, the first Monday in October for two weeks or as much thereof as necessary. The court of common pleas for said county shall be held at the same place immediately upon the conclusion of the work of the February court of general sessions, immediately upon the conclusion of the work of the court of general sessions in June, and immediately upon the conclusion of the work of the court of general sessions in October. Jurors drawn shall be eligible to serve both in the court of general sessions and the court of common pleas but a separate jury shall be drawn for the second week of each term of court.

1942 Code § 61; 1932 Code § 61; Civ. P. '22 § 59; Civ. P. '12 § 28; Civ. P. '02 § 22; 1877 (16) 299; 1896 (22) 24; 1897 (22) 433; 1899 (23) 33, 685; 1909 (26) 169; 1916 (29) 717; 1917 (30) 53; 1930 (36) 1111, 1170; 1936 (39) 1332; 1941 (42) 118, 164; 1945 (44) 5; 1948 (45) 1854; 1954 (48) 1418, 1473.

Effect of amendment.—The first 1954 amendment added at end of first sentence "for two weeks or as much thereof as necessary" and provided for new panel of petit jurors for common pleas in lieu of using panel of general sessions petit jurors.

The second 1954 amendment made jurors eligible to serve in either court but required a new jury to be drawn for each week.

Section otherwise remains effective.

§ 15-286. Terms of court in fourteenth circuit.

The courts in the fourteenth judicial circuit shall be held as hereinafter provided.

(1) *Allendale County*.—The courts of general sessions for *Allendale County* shall be held at *Allendale* on the third Monday in April, on the third Monday in June and on the third Monday in October, in each case for one week. The court of common pleas for said county shall be held at *Allendale* on the fourth Monday in April for two weeks and on the second Monday in November for one week.

And in addition to the terms of the court of common pleas above provided for there shall be terms of such court during each of the weeks in which there are fixed terms of court for the court of general sessions. At such terms, immediately upon the conclusion of the business of the court of general sessions, the court of common pleas shall open and the petit jurors drawn to serve in the court of general sessions shall serve as petit jurors in the court of common pleas. At such terms any business may be transacted that may be transacted at any other term of the court of common pleas.

(2) *Beaufort County*.—The courts of general sessions for *Beaufort County* shall be held at *Beaufort* on the first Monday in March, on the fourth Monday in June and on the first Monday in November, in each case for one week. The courts of common pleas for said county shall be held at *Beaufort* on the third Monday of March for two weeks, on the fourth Monday in June as soon as the court of general sessions shall have concluded and during the remainder of the week, on the second Monday in September for one week, and on the fourth Monday in November for one week.

1942 Code § 64; 1932 Code § 64; Civ. P. '22 § 62; Civ. P. '12 §§ 19, 26; Civ. P. '02 § 19; 1883 (18) 462; 1884 (18) 886; 1896 (22) 20; 1900 (23) 310; 1901 (23) 624; 1910 (26) 542; 1911 (27) 87; 1912 (27) 580, 770; 1913 (28) 19, 31; 1914 (28) 607; 1915 (29) 79, 198; 1916 (29) 700; 1917 (30) 37, 49; 1920 (31) 919; 1922 (32) 929; 1923 (33) 182; 1925 (34) 18; 1926 (34) 929; 1928 (35) 1179, 1264; 1929 (36) 26; 1931 (37) 257; 1934 (38) 1539; 1935 (39) 87; 1941 (42) 118; 1945 (44) 152; 1950 (46) 2204; 1952 (47) 2035; 1953 (48) 440.

Effect of amendments.—The 1952 amendment added the second paragraph of subdivision (1) above. The 1953 amendment added a term of the court of common pleas for Beaufort County beginning on the sec-

ond Monday in September. Neither of the amendments affected the introductory sentence of the section nor subdivisions (3) to (5) thereof and consequently they are not set forth above.

CHAPTER 4.

THE PROBATE COURTS.

Article 1.

Establishment, Officers, etc.

Sec.

15-410.1. Salary of probate judge, Jasper County.

15-410.2. Fees in Jasper County to be paid to treasurer.

15-426. Same; local exceptions; bond of clerk in such counties.

Article 2.

Terms, Jurisdiction, Procedure, etc.

Sec.

15-444. Jurisdiction of judges.

Article 4.

Probate Judges as Masters.

15-501. In what counties judges to act.

ARTICLE 1.

Establishment, Officers, etc.

§ 15-410.1. Salary of probate judge, Jasper County.

The probate judge of *Jasper* County shall receive as compensation for performing the duties of his office such salary and expenses as may be provided for in the annual supply act of the county or in some other act of the General Assembly of the State. The salary and expenses shall be in lieu of all fees, commissions and costs as fixed by law for the office.

1953 (48) 310.

§ 15-410.2. Fees in Jasper County to be paid to treasurer.

All commissions, fees and costs provided by law shall be collected by the probate judge of *Jasper* County and paid over to the treasurer of the county each month for credit to the general county fund. But fees, commissions and costs of administration of estates of decedents shall be collected and paid over to the county treasurer upon the conclusion of such estate and the discharge of the personal representative.

1953 (48) 310.

§ 15-426. Same; local exceptions; bond of clerk in such counties.

In *Aiken*, *Anderson*, *Barnwell*, *Horry*, *Orangeburg*, *Richland* and *Spartanburg* Counties, when so qualified by appointment by the probate judge for said counties, the clerk may do and perform any and all of the duties appertaining to the office of his principal. The probate judge in said counties may take such bond and security from his clerk as he shall deem necessary to secure the faithful discharge of the duties of the appointment but shall in all cases be answerable for the neglect of duty or misconduct in office of his clerk.

1942 Code § 206; 1932 Code § 206; Civ. P. '22 § 164; Civ. P. '12 § 40; Civ. P. '02 § 35; 1870 (14) 36; 1877 (16) 233; 1918 (30) 833; 1927 (35) 103, 251; 1929 (36) 78; 1932 (37) 1261; 1943 (43) 259; 1953 (48) 221.

Effect of amendment.—The amendment added the clerk in *Orangeburg* County to the list of clerks affected by the section.

ARTICLE 2.

*Terms, Jurisdiction, Procedure, etc.***§ 15-444. Jurisdiction of judges.**

Every judge of probate, in his county, shall have jurisdiction in all matters testamentary and of administration, in business appertaining to minors and the allotment of dower and in cases of mental incompetency.

1942 Code § 208; 1932 Code § 208; Civ. P. '22 § 166; Civ. P. '12 § 42; Civ. P. '02 § 37; 1870 (14) § 38; 1952 (47) 2042.

Effect of amendment.—The amendment substituted the phrase “mental incompetency” for the phrase “idiocy and lunacy and of persons non compos mentis.”

§ 15-461. Notice prior to discharge of administrators, etc.; effect of discharge.

The absence from the judgment roll of a petition and order showing the appointment of a guardian ad litem for infant heirs does not render the probate court's judgment discharging a personal represen-

tative void on its face so as to subject it to collateral attack by such heirs in an action on the representative's bond. *Fouche v. Royal Indemnity Co.*, 217 S. C. 147, 60 S. E. (2d) 73 (1950).

ARTICLE 4.

*Probate Judges as Masters.***§ 15-501. In what counties judges to act.**

All duties, powers and emoluments ordinarily imposed upon, vested in or attached to the office of master are hereby imposed upon, vested in and attached to the office of the judge of probate in the counties of *Allendale, Anderson, Bamberg, Colleton, Darlington, Dorchester, Edgefield, Greenwood, McCormick, Marion, Newberry, Oconee and Union*. Such probate judges shall receive for the discharge of such duties the same fees as are allowed masters in other counties.

1942 Code §§ 3700-2, 3700-3, 3700-4, 3701-4, 3701-5, 3701-7, 3702-3, 3703-2, 3703-3, 3703-5, 3704-3; 1932 Code §§ 3657, 3658, 3659, 3660, 3661, 3662, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, 3672, 3673, 3675, 3676, 3680, 3681, 3685; Civ. C. '22 §§ 2199, 2200, 2201, 2202, 2203, 2204, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2217, 2218; Civ. C. '12 § 1372; Civ. C. '02 § 965; 1893 (21) 649; 1894 (21) 977; 1912 (27) 636; 1913 (28) 128; 1916 (29) 796; 1917 (30) 27; 1918 (30) 710, 833; 1921 (32) 5; 1923 (33) 131, 193, 202; 1927 (35) 199, 304; 1932 (37) 1171; 1933 (38) 125; 1937 (40) 133; 1942 (42) 1733; 1945 (44) 60; 1948 (45) 1814; 1949 (46) 420; 1954 (48) 1699.

Effect of amendment.—The amendment eliminated Berkeley County from the first sentence.

CHAPTER 5.

THE COUNTY COURTS.

Article 2.

County Court of Greenville County.

Sec.

15-669. Drawing and summoning jurors.

Article 4.

County Court for the County of Orangeburg.

15-700. Established.

15-701. [Superseded.]

Sec.

15-701.1. Jurisdiction, powers, etc.

15-702. Judge of county court.

15-704. Compensation of county judge.

15-723. Terms of court.

Article 6.

County Court of Spartanburg County.

15-814. Grand jury.

ARTICLE 2.

*County Court of Greenville County.***§ 15-669. Drawing and summoning jurors.**

Such commissioners shall, upon the order of said court, at such time as shall be fixed, draw from the jury box a panel of petit jurors, whether the same has been

previously drawn or not, and the clerk of said court shall immediately issue to the sheriff a venire containing the names of the persons thus drawn as petit jurors. Such venire shall be returnable at such time as may be named by the court and the persons so served shall be the jurors for said court. The law relating to the qualifications, drawing and summoning of jurors of the circuit court shall apply, except as is herein otherwise provided. No more than twenty-two persons shall be drawn and summoned to attend any civil session of the county court nor more than twenty-four persons shall be drawn and summoned to attend at any criminal session of the county court, unless the court shall otherwise order.

1942 Code § 130; 1935 (39) 6; 1953 (48) 341.

Effect of amendment.—The last sentence of 18 persons for both civil and criminal formerly provided for drawing a maximum sessions.

ARTICLE 4.

County Court for the County of Orangeburg.

§ 15-700. Established.

The county court for the county of *Orangeburg* is established as the county court for the county of *Orangeburg* under the amendment to Section 1 of Article V of the Constitution relating to this court.

1953 (48) 47.

§ 15-701. Established.

Superseded by A. & J. R. 1953 (48) 47.

Crosss reference.—See now § 15-700.

§ 15-701.1. Jurisdiction, powers, etc.

The county court, as established under this article, shall have the jurisdiction and powers and be subject to the limitations prescribed in §§ 15-702 through 15-742.

1953 (48) 47.

§ 15-702. Judge of county court.

The Governor shall appoint a county judge upon the recommendation of a majority of the members of the Orangeburg County Bar Association at a meeting to be held by the said association, of which not less than five days' notice shall be given by mail to the members thereof by its chairman. The county judge shall be a resident practicing attorney of the *Orangeburg* County Bar and shall qualify and take the oath of office provided for circuit judges. The term of office of the county judge shall be for four years from the date of his qualification, the term of the first judge having begun on July 1 1953, and he shall serve until his successor is likewise appointed and shall have qualified. In case of a vacancy in such office the Governor shall appoint his successor for the unexpired term in like manner upon the recommendation of the Orangeburg County Bar Association.

1942 Code § 142; 1932 Code § 142; 1925 (34) 161; 1933 (38) 564; 1953 (48) 47.

Effect of amendment.—The amendment provided that the term of the first judge would commence July 1, 1953.

§ 15-704. Compensation of county judge.

The annual salary of the county judge shall be not less than sixty per cent of the salary paid at the time to the circuit judges of the State and shall be paid monthly by the county.

1942 Code § 155; 1932 Code § 155; 1925 (34) 161; 1951 (47) 506; 1953 (48) 47.

Effect of amendment.—The amendment than 60 per cent of the salary paid circuit provided that the salary would be not less judges.

§ 15-723. Terms of court.

The county court shall be held on the second Monday of February, the third Monday of June and on the fourth Monday of October of each year and at such other times as the judge or court shall order and shall continue for such time as is necessary to dispose of the business before the court. Each week which may be designated for jury trial shall be considered a term and the county judge may designate the time for holding both the civil and the criminal terms.

1942 Code § 150; 1932 Code § 150; 1925 (34) 161; 1953 (48) 47.

Effect of amendment.—Terms formerly ary, March, April, May, July, September began on the second Mondays of Febru- and November.

ARTICLE 5.*County Court of Richland County.***§ 15-764. Jurisdiction.**

Suit to enjoin enforcement of town ordinance.—The county court of Richland County had jurisdiction of the subject matter of a suit by citizens of a town, to enjoin enforcement of a town ordinance prohibiting the purchase or sale of water

except water purchased from the town or the public works commission. *De Treville v. Groover*, 219 S. C. 313, 65 S. E. (2d) 232 (1951).

Cited in *Evans v. Manning*, 217 S. C. 10, 59 S. E. (2d) 341 (1950).

§ 15-769. Habeas corpus and bail.

The power to grant bail mentioned in this section includes the power to grant bail in criminal proceedings. *Evans v. Manning*, 217 S. C. 10, 59 S. E. (2d) 341 (1950).

And under this section the county court has jurisdiction to issue the writ of habeas corpus in a proceeding of a criminal nature. *Evans v. Manning*, 217 S. C. 10, 59 S. E. (2d) 341 (1950).

ARTICLE 6.*County Court of Spartanburg County.***§ 15-814. Grand jury.**

All arrest warrants and bonds taken thereon, issued or taken by any magistrate within the jurisdiction of either the court of general sessions or the county court, shall be sent to the solicitor of the seventh judicial circuit, who shall prepare all indictments of which the county court or court of general sessions has jurisdiction and shall present them to the grand jury at each session of the court of general sessions in which a person is entitled to a presentment before a grand jury.

The grand jury drawn for and serving the court of general sessions of *Spartanburg* County shall constitute the grand jury for the county court and need not meet with the county court except when specially ordered to do so by the judge of the county court. When true bills are found by such grand jury, the clerk of the court of general sessions, upon order of the presiding judge of said court, shall certify to the county court for trial or other disposition such bills as the solicitor shall transfer.

All bonds shall provide for appearance before the court of general sessions, but the obligation thereof shall also apply to all cases transferred from the court of general sessions to the county court by the solicitor of the court of general sessions.

1942 Code § 199; 1932 Code § 199; 1930 (36) 1117; 1953 (48) 460.

Effect of amendment.—The amendment rewrote the section.

CHAPTER 6.

MUNICIPAL COURTS.

Article 7.

Sec.

In Cities of One Thousand and Not over Fifty Thousand.

15-1003.1. Same; exception as to salary of recorder of Aiken.

Sec.

15-1001. Established in cities over twenty thousand and not over fifty thousand.

15-1002. Council may establish in cities of one thousand and not over twenty thousand.

Article 8.

Municipal Court of Spartanburg.

15-1031. Established; hours.

ARTICLE 1.*Generally.*

§ 15-901. Mayor or intendent has powers of magistrate in criminal cases.

This article makes § 43-243 applicable to municipal courts.—The provisions of this article relating to jurisdiction of municipal courts have the effect of making § 43-243, which gives the right to all persons charged and to be tried before any

magistrate for any violation of law to deposit with the magistrate cash in lieu of entering into a recognizance, applicable to charges preferred in municipal courts. State v. Langford, 223 S. C. 20, 73 S. E. (2d) 854 (1953).

§ 15-915. Appeal to court of general sessions.

Applied in *North Augusta v. Fennell*, 221 S. C. 112, 69 S. E. (2d) 121 (1952).

ARTICLE 7.*In Cities of One Thousand and Not over Fifty Thousand.*

§ 15-1001. Established in cities over twenty thousand and not over fifty thousand.

A municipal court is hereby established for every city in this State whose population by the last census was not less than twenty thousand and not more than fifty thousand or which may now or hereafter by actual enumeration have a population within such limits, except the cities of *Spartanburg* and *Charleston*.

1942 Code § 959; 1932 Code §§ 959, 7246; Cr. P. '22 § 49; Civ. C. '22 § 4401; Cr. C. '12 § 49; Civ. C. '12 § 3001; 1902 (23) 1048; 1923 (33) 164; 1953 (48) 421.

Effect of amendment.—Formerly Green-ton were excepted from the operation of this section.

§ 15-1002. Council may establish in cities of one thousand and not over twenty thousand.

The city council of any city in this State whose population by the last census was not less than one thousand and not more than twenty thousand or which may now or hereafter by actual enumeration have such population within such limits may, by ordinance duly enacted, establish in such city a municipal court for the trial and determination of all cases arising under the ordinances of such city.

1942 Code § 968; 1932 Code §§ 972, 7246; Cr. P. '22 § 59; Civ. C. '22 § 4401; Cr. C. '12 § 58; Civ. C. '12 § 3001; 1904 (23) 397; 1905 (24) 911; 1915 (29) 197; 1923 (33) 164; 1953 (48) 339.

Effect of amendment.—The section was formerly applicable to cities of 1,500 to 20,000.

§ 15-1003.1. Same; exception as to salary of recorder of Aiken.

Provisions of A. & J. R. 1952 (47) 1730 make up this section.

ARTICLE 8.

Municipal Court of Spartanburg.

§ 15-1031. Established; hours.

There is hereby established a municipal court in the city of *Spartanburg* which shall meet at the hour of ten a. m. every day except Saturdays, Sundays and legal holidays and on Wednesdays at three p. m. except legal holidays for the purpose of handling traffic violations.

1954 (48) 1556.

Effect of amendment.—The amendment added “Saturdays,” and all after first “holidays”.

CHAPTER 7.

JUVENILE AND DOMESTIC RELATIONS COURTS IN CERTAIN COUNTIES.

ARTICLE 1.

General Provisions.

§ 15-1101. Short title.

Cited in *Fordham v. Fordham*, 223 S. C. 401, 76 S. E. (2d) 299 (1953).

§ 15-1102. Application of chapter.

Section of chapter held invalid as special law.—See § 15-1233 and note thereto.

ARTICLE 5.

Family Court Division.

§ 15-1233. When husband liable for support or guilty of non-support.

Section invalid as special law.—Since, under § 15-1102, this chapter is applicable only to counties containing a city with a population of 70,000, the provisions of this section, relating to service upon and jurisdiction of a defaulting father or husband and substituting residence of the petitioner for the residence of the respondent or defendant which is requisite under the general law, constitute a special law in a situation where the general venue statute, § 10-303, has already been made applicable, and are invalid for contravention of S. C. Const., Art. 3, § 34. *Fordham v. Fordham*, 223 S. C. 401, 76 S. E. (2d) 299 (1953).

CHAPTER 7.1.

DOMESTIC RELATIONS COURT IN LAURENS COUNTY.

Sec.

15-1281.1. Same; jurisdiction of cases involving minors.

Sec.

15-1293.1. Same; cases involving delinquent or neglected minors.

§ 15-1281.1. Same; jurisdiction of cases involving minors.

All cases involving minors shall be brought in the domestic relations court of *Laurens* County and the probate judge is relieved of responsibility in connection therewith. The judge of the domestic relations court shall have the responsibility and power exercised prior to May 27 1953 by the probate judge of *Laurens* County with regard to the offenses of and the welfare of minor children except that the probate judge shall retain the jurisdiction in all lunacy proceedings.

1953 (48) 448.

§ 15-1293.1. Same; cases involving delinquent or neglected minors.

In cases involving any delinquent or neglected minor child, the judge of the court shall take any appropriate action looking toward the welfare of such minor

without the necessity of formal pleadings being filed in such cases, if same be practicable. If informal adjustment appears impracticable the court may direct the person making the informal complaint, if an adult or some responsible person, if the complainant be a minor under the age of eighteen years, to file petition upon form to be supplied by the court, and shall conduct such hearings thereon necessary to dispose of the cases giving due notice to all parties concerned.

1953 (48) 448.

CHAPTER 7.2

Juvenile and Domestic Relations Court for Greenville County.

Sec.

15-1297. Establishment, etc.

§ 15-1297. Establishment, etc.

Provisions of A. & J. R. 1954 (48) 1825 make up this section.

CHAPTER 8.

CHILDREN'S COURTS.

Article 1.

Children's Court of Greenville County.

Sec.

15-1301 to 15-1317. [Repealed.]

Article 4.

Provisions Applicable to All Courts Established under Chapter.

Sec.

15-1382. Adoption.

ARTICLE 1.

Children's Court of Greenville County.

§§ 15-1301 to 15-1317. Establishment; other provisions applicable.

Repealed by A. & J. R. 1954 (48) 1825.

Cross reference.—See now § 15-1297.

ARTICLE 2.

Children's Court of Spartanburg County.

§ 15-1338. Other provisions applicable.

Section 15-1382, relating to the adoption of a minor, is not in conflict with this article. Driggers v. Jolley, 219 S. C. 31, 64 S. E. (2d) 19 (1951).

ARTICLE 3.

Children's Courts in Counties of 70,000 to 71,000, 1940 Census, and Between 85,000 and 100,000, 1920 Census.

Editor's note.—"and Between 85,000 and 100,000, 1920 census" added to article caption in view of § 15-1351.

ARTICLE 4.

Provisions Applicable to All Courts Established under Chapter.

§ 15-1351. Established.

Cross reference.—Juvenile and Domestic Relations Court of Greenville County, § 15-1297; Children's Court of Spartanburg County, §§ 15-1331, et seq.

§ 15-1382. Adoption.

Persons desiring to adopt a minor may begin proceedings before the judge of the children's court. The parents or guardian or anyone having charge of such child shall be made parties to the proceeding and, with their consent, the judge may sanction such adoption if the party seeking it seems suitable after investigation by the probation officer. The petitioner shall give bond for the property of

the child, if any, in case the child is an orphan. The name of the child may be changed to that of the petitioner if allowed by the clerk. The order of adoption may be revoked at any time by the judge for cause.

1942 Code § 255; 1932 Code § 255; 1923 (33) 207; 1925 (34) 231; 1927 (35) 227; 1934 (38) 1261; 1939 (41) 287; 1954 (48) 1763.

Effect of amendment.—The amendment eliminated the first part of the next to the last sentence providing for inheritance by adopted children. See § 19-52.11 for such inheritance.

This section does not conflict with article 2 of this chapter, creating the children's court of Spartanburg County. *Driggers v. Jolley*, 219 S. C. 31, 64 S. E. (2d) 19 (1951).

Under this section consent of the person having charge of the child is made absolutely essential to confer jurisdiction on the children's court to make an order of adoption. *Driggers v. Jolley*, 219 S. C. 31, 64 S. E. (2d) 19 (1951).

Such consent, once given, is ordinarily binding.—Where a natural parent has freely and knowingly given the required consent to the adoption of his or her child, and the proposed adoptive parents have

acted upon such consent by bringing adoption proceedings, the consent is ordinarily binding upon the natural parent and cannot be arbitrarily withdrawn so as to bar the court from decreeing the adoption. *Driggers v. Jolley*, 219 S. C. 31, 64 S. E. (2d) 19 (1951).

Withdrawal of consent depriving court of jurisdiction.—When, in adoption proceedings, the natural parents withdrew their consent, and the petitioners joined in with the withdrawal of consent and withdrew their petition for adoption, the children's court of Spartanburg County lost jurisdiction, notwithstanding the provision of § 15-1391 that when once the children's court obtains jurisdiction, such jurisdiction continues during the minority of the child. *Driggers v. Jolley*, 219 S. C. 31, 64 S. E. (2d) 19 (1951).

§ 15-1391. Continuance of jurisdiction once obtained.

Loss of jurisdiction in adoption proceedings.—See note to § 15-1382.

CHAPTER 9.1.

THE CIVIL AND CRIMINAL COURT OF DARLINGTON COUNTY.

Sec.

15-1580.1. Civil and criminal court of Darlington County.

Sec.

15-1581 to 15-1599.3. [Repealed.]

§ 15-1580.1. Civil and criminal court of Darlington County.

Provisions from A. & J. R. 1953 (48) 141 make up this section.

§ 15-1581 to 15-1599.3. Civil court of Darlington County.

Repealed by A. & J. R. 1952 (47) 1982.

Cross reference.—See now § 15-1580.1.

CHAPTER 10.

THE CIVIL COURT OF FLORENCE.

Sec.

15-1602.1. Salary.

§ 15-1602.1. Salary.

The judge shall receive as compensation the sum of seven thousand five hundred dollars per annum, to be paid in monthly installments by the county treasurer upon the warrant of the board of county commissioners.

1952 (47) 2143.

CHAPTER 10.1.

THE CIVIL COURT OF HORRY.

Sec.

15-1621. Establishment, etc.

§ 15-1621. Establishment, etc.

Provisions of A. & J. R. 1953 (48) 118 make up this section.

CHAPTER 10.11.

THE CIVIL AND DOMESTIC RELATIONS COURT OF SUMTER COUNTY.

Sec.

15-1650. Establishment, etc.

§ 15-1650. Establishment, etc.

Provisions of A. & J. R. 1954 (48) 1452, 1691 make up this section.

CHAPTER 11.

CLERKS OF COURT.

Article 3.

Sec.

Books, Papers and Records.

15-1765. Destruction of old chattel mortgages in Union County.

Sec.

15-1764.1. [Omitted. Temporary.]

15-1764.2. [Omitted. Temporary.]

Article 4.**Accounts and Disposition of Moneys.**

15-1782.1. Same; in Kershaw County.

ARTICLE 3.

*Books, Papers and Records.***§ 15-1764.1. Destruction of old chattel mortgages in Horry County.**

Omitted, not permanent.

§ 15-1764.2. Destruction of certain records in Lee County.

Omitted, not permanent.

§ 15-1765. Destruction of old chattel mortgages in Union County.

Provisions of A. & J. R. 1953 (48) 383 make up this section.

ARTICLE 4.

*Accounts and Disposition of Moneys.***§ 15-1782.1. Same; in Kershaw County.**

All fines collected in the circuit court in *Kershaw* County shall, in all cases when the arrest was made or the charges preferred by the police officers of the city of *Camden* and when the city police act in cooperation with and assist the sheriff, deputy sheriff, constables or law enforcement officers of the county and appear as material witnesses in such cases, be equally divided, one-half thereof being paid into the county treasury and one-half thereof being paid to the city clerk and treasurer of the city of *Camden*.

1953 (48) 129.

CHAPTER 12.

MASTERS.

Sec.

15-1801. Master established in certain counties in lieu of referee.

15-1803.7. Same; exception for Berkeley County.

15-1813. Same; exceptions in certain counties.

Sec.

15-1814.1. Same; reference of equity cases in Berkeley County.

15-1817.7. Fees and salary in Berkeley County.

§ 15-1801. Master established in certain counties in lieu of referee.

The office of referee and the practice of referring cases to referees as provided in this Code shall not exist or be used in the counties of *Abbeville*, *Aiken*, *Barnwell*, *Berkeley*, *Charleston*, *Chesterfield*, *Dillon*, *Florence*, *Greenville*, *Horry*, *Ker-*

shaw, Lee, Richland, Saluda Spartanburg and Sumter. In these counties the office of master is established. There shall be one master in each such county.

1942 Code § 3678; 1932 Code § 3678; Civ. C. '22 § 2219; Civ. C. '12 § 1373; Civ. C. '02 § 966; G. S. 782; 1910 (16) 609; 1914 (29) 26; 1916 (29) 805; 1920 (31) 764; 1921 (32) 139; 1923 (33) 131, 193; 1924 (33) 948; 1935 (39) 458; 1936 (39) 1531; 1939 (41) 230; 1949 (46) 546; 1954 (48) 1699.

Effect of amendment.—The amendment added "Berkeley County".

§ 15-1803.7. Same; exception for Berkeley County.

The master in equity for *Berkeley* County shall be elected in the general election for 1954 as other county officers are elected and shall serve for a term of four years.

1954 (48) 1699.

§ 15-1813. Same; exceptions in certain counties.

The provisions of § 15-1812 shall not apply to the masters for *Aiken, Barnwell, Florence, Richland* and *Sumter* Counties.

The Master for

* * *

(b) *Abbeville* County, if otherwise qualified, shall be allowed to practice law in all of the courts in this State and the United States except in matters of equity in which he may have to act officially.

* * *

(f) *Berkeley* County shall be allowed to practice law in all of the courts of this State and the United States except in equity matters in the court of common pleas of *Berkeley* County.

1942 Code §§ 3683, 3702-5; 1932 Code §§ 3683, 3690, 4941; Civ. C. '22 §§ 2227, 5746; Civ. C. '12 §§ 1378, 4224; Civ. C. '02 §§ 971, 3113; G. S. 788; R. S. 842; 1840 (11) 171 § 30; 1878 (16) 609 § 5; 1894 (21) 933; 1909 (26) 179; 1910 (26) 642; 1911 (27) 84, 85; 1912 (27) 554; 1914 (28) 510; 1916 (29) 796, 798; 1920 (31) 964; 1921 (32) 123; 1925 (34) 76, 97, 112; 1926 (34) 1014, 1037; 1927 (35) 280; 1928 (35) 1162; 1929 (36) 227; 1944 (43) 1332; 1949 (46) 546; 1950 (46) 2323; 1954 (48) 1434, 1699.

Effect of amendments.—First 1954 amendment permitted Abbeville County master, item (b), if qualified, to practice as above stated instead of being confined to the circuit court.

The second 1954 amendment added item (f).

Items (a), (c), (d) and (e) remain unchanged.

§ 15-1814.1. Same; reference of equity cases in Berkeley County.

All equity matters referred in *Berkeley* County shall be referred to the master in equity, and in any case in which counsel may agree upon a special referee the master in equity shall receive the fees unless waived by him.

1954 (48) 1699.

§ 15-1817.7. Fees and salary in Berkeley County.

The master in equity of *Berkeley* County shall be allowed the fees provided for by law and in addition thereto the salary provided in the annual appropriation act for *Berkeley* County.

1954 (48) 1699.

CHAPTER 13.

STENOGRAPHERS, AUCTIONEERS, BAILIFFS AND OTHER COURT ATTACHES.

Article 1.

Court Stenographers and Auctioneers.

Sec.

15-1913. Auctioneer of Pickens County.

ARTICLE 1.

Court Stenographers and Auctioneers.

§ 15-1913. Auctioneer of Pickens County.

The office of auctioneer for *Pickens* County is hereby created. He shall be appointed by the Governor upon the recommendation of a majority of the members of the county legislative delegation and shall serve for two years and until his successor shall have been appointed, as provided for herein. He shall act as auctioneer in all judicial sales, tax sales or sales under levy and execution. He shall receive as compensation for his services the sum of three dollars for conducting each sale, which shall be taxed as other costs in the action or proceeding are taxed. In the event that the auctioneer is disqualified or incapacitated to conduct any sale, he may designate some person to act in his place and stead.

1942 Code § 4728-3; 1937 (40) 122; 1949 (46) 224; 1952 (47) 2133.

Effect of amendment.—The amendment - sale of real estate in any case, to a flat fee changed the fee from one dollar, with an of three dollars on all sales. exception for a five dollar fee for the first

Title 16.

Crimes and Offenses.

Chap. 2. Offenses Against the Peace, § 16-94.

5. Offenses Against Property, § 16-355 to 16-386.

6. Offenses Against Morality and Decency, § 16-404.1.

7. Offenses Against Public Policy, § 16-564.1.

CHAPTER 1.

ACCESSORIES.

§ 16.1. Accessories before fact punished as principals.

But accessory may not be convicted on indictment as principal. catchline in Code. See *State v. Brazzell*, 223 S. C. 103, 74 S. E. (2d) 573 (1953).

In accord with paragraph under this

§ 16-2. When and how tried.

Accessory may not be convicted on indictment as principal. *State v. Brazzell*, 223 S. C. 103, 74 S. E. (2d) 573 (1953).

CHAPTER 2.

OFFENSES AGAINST THE PERSON.

Article 5.

Kidnapping, Assault, Etc.

Sec.

16-94. Abandonment of ice boxes, refrigerators, etc. without removing

door or device for closing same; not permit certain to be accessible to children.

ARTICLE 1.

*Homicide.***§ 16-51. Murder defined.**

II. WHAT CONSTITUTES MURDER.

Malice is an essential ingredient of murder. State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951).

Words are not sufficient provocation, etc.

In accord with paragraph under this catchline in Code. See State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951).

Words accompanied by hostile acts may, according to circumstances, not only reduce a killing from murder to manslaughter, but may establish the plea of self-defense. State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951).

Quoted in State v. Self, . . . S. C. . . ., 82 S. E. (2d) 63 (1954), which was prosecution for robbery, larceny, and assault and battery with intent to kill, for purpose of defining last offense.

§ 16-55. Manslaughter.

The general statutory definition in this section includes both voluntary and involuntary manslaughter. State v. Barnett, 218 S. C. 415, 63 S. E. (2d) 57 (1951).

Voluntary manslaughter is usually defined as the unlawful killing of a human being in sudden heat of passion upon a sufficient legal provocation. State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951).

But no mere words, however insulting can excuse the killing, etc.

In accord with paragraph under this catchline in Code. See State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951).

Words accompanied by hostile acts may, however, reduce a killing to manslaughter, or establish the plea of self-defense. State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951), quoting State v. Mason, 115 S. C. 214, 105 S. E. 286 (1920).

The legislature of this State has never undertaken to define involuntary manslaughter. This the courts necessarily follow the common-law definition. State v. Barnett, 218 S. C. 415, 63 S. E. (2d) 57 (1951).

Degree of negligence required for involuntary manslaughter.—Where the instrument involved is not inherently dangerous, more than ordinary negligence is required to support a conviction for involuntary manslaughter, but simple negligence causing the death of another is sufficient if the instrumentality is of such character that its negligent use under the surrounding circumstances is necessarily dangerous to human life or limb. Firearms and motor vehicles fall within the latter category. State v. Barnett, 218

III. MALICE.

A. Definitions and Illustrations.

Definitions of malice.

In accord with 1st paragraph under this catchline in Code. See State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951).

In accord with 3rd paragraph under this catchline in Code. See State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951).

"Aforethought" refers to time evil intent is conceived.

In accord with paragraph under this catchline in Code. See State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951).

Malice need not exist for any particular length of time prior to the killing. State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951).

S. C. 415, 63 S. E. (2d) 57 (1951).

The reckless homicide statute, § 46-341, did not repeal the common-law offense of involuntary manslaughter where death resulted from the operation of an automobile, but, on the contrary, the legislature desired to preserve that offense as defined by the Supreme Court. State v. Barnett, 218 S. C. 415, 63 S. E. (2d) 57 (1951).

And simple negligence in the operation of an automobile is sufficient to support a conviction of involuntary manslaughter. State v. Barnett, 218 S. C. 415, 63 S. E. (2d) 57 (1951).

This section implies that the trial judge is to exercise a discretion, etc.

In accord with paragraph under this catchline in Code. See State v. Green, 220 S. C. 315, 67 S. E. (2d) 509 (1951).

And he may inquire into any relevant facts in aggravation or mitigation of punishment.—With the view of fixing the sentence to be imposed upon a defendant convicted of manslaughter, it is proper for the trial judge, in open court, in the presence of the defendant, to inquire into any relevant facts in aggravation or mitigation of punishment. State v. Green, 220 S. C. 315, 67 S. E. (2d) 509 (1951).

But it is error to request the jury to recommend punishment.—In a prosecution for manslaughter it was error for the trial judge, following the rendition of the verdict of guilty, to request the jury to return to the jury room and make a recommendation as to the quantum of punishment, and to impose sentence in accordance with the jury's recommendation. State v. Green, 220 S. C. 315, 67 S. E. (2d) 509 (1951).

ARTICLE 4.

Rape, Abortion, etc.

§ 16-71. Rape.

It was not error not to charge the law applicable to statutory rape and incest where the indictment charged the defendant with common-law rape and with at-

tempted criminal assault. *State v. Phillips*, 222 S. C. 338, 72 S. E. (2d) 910 (1952).

§ 16-82. Death resulting from abortion.

Cited in *Evans v. Manning*, 217 S. C. 10, 59 S. E. (2d) 341 (1950).

ARTICLE 5.

Kidnapping, Assault, etc.

§ 16-94. Abandonment of ice boxes, refrigerators, etc., without removing door or device for closing same; not permit certain to be accessible to children.

Any person who abandons or discards any ice box, refrigerator, ice chest or other type of air tight container of a capacity sufficient to contain any child, who neglects prior to such abandonment to remove the door, lid or other device for the closing thereof, and any owner, lessee or other person in charge of property who knowingly permits any abandoned ice box, refrigerator, ice chest or other type of air tight container to remain thereon accessible to children without removing the door, lid or other closing device therefrom shall be guilty of a misdemeanor, and upon conviction, shall be fined not more than one hundred dollars or imprisoned not more than thirty days.

1954 (48) 1479.

CHAPTER 3.

OFFENSES AGAINST THE PEACE.

ARTICLE 4.

Other Offenses Connected with Weapons.

§ 16-141. Pointing pistol or gun at any person.

Cited in *Hendrix v. Employers Mut. Liability Ins. Co.*, 98 F. Supp. 84 (1951); *Employers Mut. Liability Ins. Co. v. Hendrix*, 199 F. (2d) 53 (1952).

CHAPTER 5.

OFFENSES AGAINST PROPERTY.

Article 4.

Forgery, Larceny, Embezzlement, Obtaining Money under False Pretenses, etc.

Sec.

16-355. Stealing livestock.

Article 5.

Trespasses and Unlawful Use of Property of Others.

Sec.

16-384.1. Dumping trash or refuse without permission.

16-386. Entry on lands of another after notice prohibiting same.

ARTICLE 1.

General Provisions.

§ 16-302. Making, mending or possessing tools, etc., to be employed in crime.

Instruments need not be originally designed for criminal use.

In accord with paragraph under this

catchline in Code. See *State v. Nicholson*, 221 S. C. 472, 71 S. E. (2d) 306 (1952).

ARTICLE 2.

*Arson and Other Offenses Involving Fire.***§ 16-312. Burning building not subject of arson.**

Applied in *State v. Blackwell*, 220 S. C. 342, 67 S. E. (2d) 684 (1951).

ARTICLE 3.

*Burglary, Housebreaking, Robbery, etc.***§ 16-331. Punishment for burglary.**

I. GENERAL CONSIDERATION.

Applied in *State v. Goodson*, ... S. C., 82 S. E. (2d) 804 (1954).

Quoted in *Maxey v. Manning*, 224 S. C. 320, 78 S. E. (2d) 633 (1953).

II. WHAT CONSTITUTES
BURGLARY

Definitions.—In accord with 2nd paragraph under this catchline in Code. See *State v. Clamp*, 225 S. C. 89, 80 S. E. (2d) 918 (1954).

Burglary is a crime against possession and not against property. *State v. Clamp*, 225 S. C. 89, 80 S. E. (2d) 918 (1954).

A breaking may be any act of physical force.—A breaking, essential to constitute the crime of burglary, may be any act of physical force, however slight, whereby any obstruction to entering is forcibly removed. It does not require violent or mechanical force to constitute a burglarious breaking. Opening a window, picking a lock, or opening a door with a key is sufficient. If any

force be required and employed to remove or displace that which has been placed there to close the opening, this is enough. *State v. Clamp*, 225 S. C. 89, 80 S. E. (2d) 918 (1954).

“Breaking” is one of the essential elements of the crime of burglary, and the mere opening of an unlatched door or the mere opening of an unlatched screen door is a sufficient breaking. *State v. Clamp*, 225 S. C. 89, 80 S. E. (2d) 918 (1954).

IV. TRIAL.

A. Instructions.

Illustration of breaking not charge on facts.—In prosecution for burglary, instruction that walking into an open door would not be a breaking, but the mere opening of an unlatched door, or the mere opening of an unlatched screen door is a sufficient breaking under the law, was not erroneous as a charge on the facts. *State v. Clamp*, 225 S. C. 89, 80 S. E. (2d) 918 (1954).

§ 16-332. Housebreaking which is not burglary.

Housebreaking is crime against possession.—In accord with paragraph under this catchline in Code. See *State v. Miller*, 225 S. C. 21, 80 S. E. (2d) 354 (1954).

This section creates two distinct and different offenses.

In accord with paragraph under this catchline in Code. See *State v. Sowell*, 85 S. C. 278, 67 S. E. 316 (1910); *State v. Sweat*, 221 S. C. 270, 70 S. E. (2d) 234 (1952).

And where both are in same indictment, election may be required.

In accord with paragraph under this catchline in Code. See *State v. Sowell*, 85 S. C. 278, 67 S. E. 316 (1910); *State v.*

Sweat, 221 S. C. 270, 70 S. E. (2d) 234 (1952).

And proof of one will not support conviction under indictment charging the other.—Where the first count of an indictment specifically charged that the offense of housebreaking had been committed in the daytime, and the proof showed without contradiction that the breaking and entering took place in the nighttime, a verdict of not guilty should have been directed under that count of the indictment. *State v. Sweat*, 221 S. C. 270, 70 S. E. (2d) 234 (1952), citing *State v. Sowell*, 85 S. C. 278, 67 S. E. 316 (1910).

§ 16-333. Robbery while armed with deadly weapon.

Sentencing under this section improper where instrument doubtful.—In prosecution for assault and battery with intent to kill, where testimony not clear as to instrument used in striking, defendant should not have been sentenced to fifteen years which

would be proper only where deadly weapon used as set forth in this section, but should have been sentenced under provisions of § 17-553 construed with § 17-552. *State v. Self*, ... S. C., 82 S. E. (2d) 63 (1954).

ARTICLE 4.

Forgery, Larceny, Embezzlement, Obtaining Money under False Pretenses, etc.

§ 16-351. Forgery.**I. GENERAL CONSIDERATION.**

Possession of forged instrument presumes guilt.—One found in possession of forged instrument of which he purports to be beneficiary, and applying it to his own use, must, in absence of explanation satisfactory to jury, be presumed to have forged it or to have been privy to its forgery. *State v. Orr*, ... S. C., 82 S. E. (2d) 523 (1954).

II. WHAT CONSTITUTES FORGERY.

Name forged may be fictitious.—To constitute forgery the name alleged to be forged need not be that of any person in existence and may be wholly fictitious. *State v. Orr*, ... S. C., 82 S. E. (2d) 523 (1954).

§ 16-352. Privily stealing from person or house grand larceny.

The corpus delicti in larceny consists of two elements.—The loss of the property by the owner and the loss by a felonious taking. *State v. Teal*, ... S. C., 82 S. E. (2d) 787 (1954)

Applied in *State v. Varen*, 223 S. C. 34, 74 S. E. (2d) 223 (1953); *State v. Shoemaker*, ... S. C., 82 S. E. (2d) 802 (1954); *State v. Goodson*, ... S. C., 82 S. E. (2d) 804 (1954).

§ 16-355. Stealing livestock.

Any person found guilty of the larceny of any horse, mule, cow, hog or any other livestock shall suffer imprisonment for a period of not less than three months nor more than ten years, and a fine of not more than five hundred dollars, either or both in the discretion of the court. Any motor vehicle or other chattel used by or found in possession of any person engaged in the commission of such crime shall be subject to confiscation and shall be confiscated and sold under the provisions of § 57-241.

1942 Code § 1144; 1932 Code § 1144; Cr. C. '22 § 38; Cr. C. '12 § 183; Cr. C. '02 § 149; G. S. 2489; R. S. 146; 1878 (16) 632; 1929 (36) 101; 1954 (48) 1705.

Effect of amendment.—The amendment (1) reduced minimum imprisonment to three months instead of one year, (2) eliminated State Penitentiary as place of con-

finement, (3) placed a maximum on the fine, (4) eliminated imprisonment limitation if value of livestock under twenty dollars and (5) added last sentence.

§ 16-362. Receiving stolen goods.**I. GENERAL CONSIDERATION.**

Offense is separate from conviction of principal felon.

In accord with paragraph under this catchline in Code. See *State v. Sweat*, 221 S. C. 270, 70 S. E. (2d) 234 (1952).

Accessory before or after fact may be convicted, etc.

In accord with paragraph under this catchline in Code. See *State v. Sweat*, 221 S. C. 270, 70 S. E. (2d) 234 (1952).

But this does not apply to one who commits larceny.

In accord with 1st paragraph under this catchline in Code. See *State v. Sweat*, 221 S. C. 270, 70 S. E. (2d) 234 (1952).

II. GUILTY KNOWLEDGE AND FRAUDULENT INTENT.

Failure to pursue inquiry is not equivalent of guilty knowledge.—In accord with paragraph under this catchline in Code. See *State v. Mills*, 225 S. C. 151, 81 S. E. (2d) 285 (1954).

Applied in *State v. Clamp*, 225 S. C. 41, 80 S. E. (2d) 512 (1954).

ARTICLE 5.

Trespasses and Unlawful Use of Property of Others.

§ 16-384.1. Dumping trash or refuse without permission.

It shall be unlawful for any person without written permission to dump or leave trash, refuse or garbage on any property belonging to another or on or along any public highway in the State. Any violation of this section shall be punishable by a fine of not more than one hundred dollars or by imprisonment for not longer than thirty days.

1953 (48) 160.

§ 16-386. Entry on lands of another after notice prohibiting same.

Every entry upon the lands of another where any horse, mule, cow, hog or any other livestock is pastured, or any other lands of another, after notice from the owner or tenant prohibiting such entry, shall be a misdemeanor and be punished by a fine not to exceed one hundred dollars, or by imprisonment with hard labor on the public works of the county for not exceeding thirty days. When any owner or tenant of any lands shall post a notice in four conspicuous places on the borders of such land prohibiting entry thereon, a proof of the posting shall be deemed and taken as notice conclusive against the person making entry as aforesaid for the purpose of trespassing.

1942 Code § 1190; 1932 Code § 1190; Cr. C. '22 § 81; Cr. C. '12 § 241; Cr. C. '02 § 186; G. S. 2507; R. S. 176; 1866 (13) 406; 1883 (18) 43; 1898 (22) 811; 1954 (48) 1705.

Effect of amendment.—The amendment eliminated necessity for notice to be published in a newspaper and the phase of proof relating to time of posting and substituted "trespassing" at end of section for "hunting or fishing on such land".

§ 16-387. Entry on another's lands for various purposes without permission.

1953 (48) 346.

Cross reference.—As to hunting, fishing, etc. on lands of another without permission, see § 23-8.

CHAPTER 6.

OFFENSES AGAINST MORALITY AND DECENCY.

Sec.

16-404.1. Commission of lewd act upon child under 14.

§ 16-402. Incest; prohibited degrees.

Cited in *State v. Phillips*, 222 S. C. 338, 72 S. E. (2d) 910 (1952).

§ 16-404.1. Commission of lewd act upon child under 14.

It shall be unlawful for any adult wilfully and lewdly to commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of fourteen years, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such child. Anyone violating the provisions of this section shall be imprisoned in the discretion of the court.

1953 (48) 346.

CHAPTER 7.

OFFENSES AGAINST PUBLIC POLICY.

Article 4.

Miscellaneous Offenses.

Sec.

16-564.1. Same; where inapplicable to soliciting of agricultural laborers for employment in adjacent State.

ARTICLE 1.

Gambling, Lotteries, etc.

§ 16-501. Setting up lotteries.

The setting up of a lottery is not necessarily a crime which requires concerted action. One person may set up a lottery or expose it to be played. *State v. Ferguson*, 221 S. C. 300, 70 S. E. (2d) 355 (1952).

Indictment may charge defendants at the same time with conspiracy and with setting up a lottery. *State v. Ferguson*, 221 S. C. 300, 70 S. E. (2d) 355 (1952); *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

And the punishment for conspiracy may exceed the maximum provided in this section for setting up a lottery. State v. Ferguson, 221 S. C. 300, 70 S. E. (2d) 355 (1952); State v. McIntire, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

ARTICLE 4.

Miscellaneous Offenses.

§ 16-564.1. Same; when inapplicable to soliciting of agricultural laborers for employment in adjacent state.

The provisions of § 16-564 shall not be applicable to any person soliciting or hiring laborers in this State to be employed in agricultural work in any state bordering on this State when such adjacent state places no limitation on the solicitation or employment of farm labor by South Carolina employers.
1954 (48) 1415.

Title 17.

Criminal Procedure.

Chap. 4. Process and Arrest, § 17-259.

CHAPTER 4.

PROCESS AND ARREST.

Sec.
17-259. Service of criminal process on Sunday.

§ 17-254. Police of any city or town may arrest within one mile of corporate limits.

Editor's note.—Similar provisions are in § 53-1.

§ 17-259. Service of criminal process on Sunday.

No criminal process shall be served on Sunday, except for treason, felony, violation of the law relating to intoxicating liquors or breach of the peace. But no law enforcement officer, who is not under bond, shall be permitted to execute a search warrant.

1942 Code § 3523; 1932 Code § 3523; Civ. C. '22 § 2066; Civ. C. '12 § 1173; Civ. C. '02 § 848; G. S. 663; R. S. 728; 1931 (37) 78; 1954 (48) 1759.

Effect of amendment.—The amendment added "violation of the law relating to intoxicating liquors" and last sentence.

Cross reference.—See § 53.1 for provisions requiring bonded peace officers to execute a search warrant.

Requirement of service by officer under bond limited.—The provision restricting execution of search warrant to officer under bond applies only to service of criminal process on Sunday relating to violation of law relating to intoxicating liquors. Atty. Gen. Op., May 4, 1954.

§ 17-262. Persons not to be removed from one prison to another without cause.

Violation waived.—Where defendant removed from penitentiary to another county for trial under proper order, and question not raised below, and defendant stated several times that he was ready for trial

and case proceeded without objection, question as to jurisdiction of his person clearly waived. State v. Orr, ... S. C., 82 S. E. (2d) 523 (1954).

CHAPTER 6.

HABEAS CORPUS.

§ 17-361. Notice to be given to Attorney General, etc.

Cited in *Ex parte Wilson*, 219 S. C. 139,
64 S. E. (2d) 400 (1951).

§ 17-364. Person discharged not to be re-arrested, etc.; penalty for so doing.

Applied in *State v. Clough*, 220 S. C.
390, 68 S. E. (2d) 329 (1951).

CHAPTER 7.

INDICTMENTS.

§ 17-401. Offenses to be prosecuted by indictment; exceptions.

No indictment is required in proceedings before a magistrate or in a municipal court. *State v. Langford*, 223 S. C. 20,
73 S. E. (2d) 854 (1953).

§ 17-402. What allegations sufficient for indictment.

I. GENERAL CONSIDERATION.

The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet. *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

Description of offense.—The offense must be so described that the accused may know how to answer the charge, the court what judgment to pronounce, and conviction or acquittal thereon may be pleaded in bar to any subsequent prosecution. *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

Purpose of allegation of place.
In accord with paragraph under this catchline in Code. See *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

II. APPLICATION OF SECTION.

As to indictment for setting up lottery and for conspiracy to set up lottery, see *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

§ 17-409. How defects in indictments may be objected to.

Applied in *State v. McAbee*, 220 S. C. 272, 67 S. E. (2d) 417 (1951).

§ 17-410. Amendments of indictments.

Or to fill in proper date.

An indictment for maintaining a common nuisance and for unlawfully selling alcoholic liquors was properly amended by changing the alleged date of the offense from May 15 to April 15 to conform to the proof, since the amendment did not change the nature of the offense, and there was nothing in the record to substantiate defendant's contention that he was taken by surprise. *State v. McCrae*, 222 S. C. 194, 72 S. E. (2d) 451 (1952).

Inserting name of owner of stolen property.—An indictment for larceny, which alleged that tobacco was stolen from the possession of warehousemen, was properly amended to conform to the proof by adding, following the allegation that the tobacco had been stolen from the possession of the warehousemen the words "the true owner being C. W. Walters Tobacco Co., a Corp." *State v. Sweat*, 221 S. C. 270, 70 S. E. (2d) 234 (1952).

CHAPTER 8.

VENUE.

§ 17-454. Injury within limits and death beyond limits of this State.

Applied in *State v. Gantt*, 223 S. C. 431,
76 S. E. (2d) 674 (1953).

§ 17-455. Injury beyond limits and death within limits of State.

Stated in *State v. Gantt*, 223 S. C. 431, 76
S. E. (2d) 674 (1953).

§ 17-456. When injury in one county and death in another.

This section does not undertake to fix exclusive jurisdiction in either county. State v. Howell, 220 S. C. 178, 66 S. E. (2d) 701 (1951).

Applied in State v. Gantt, 223 S. C. 431, 76 S. E. (2d) 674 (1953).

§ 17-457. When persons in different counties when offense committed.

Stated in State v. Gantt, 223 S. C. 431, 76 S. E. (2d) 674 (1953).

CHAPTER 9.

PLEADING AND TRIAL.

§ 17-506. Accused may have counsel, witnesses, etc.

Cross reference.—As to examination of witness concerning written statement made to a public employee, see § 26-7.1.

CHAPTER 10.

JUDGMENT AND EXECUTION.

ARTICLE 1.

*Conviction and Sentence.***§ 17-552. Punishment for felony when not specially provided for.**

This section and § 17-553 must be construed together.

In accord with this catchline in Code. See State v. Self, ... S. C., 82 S. E. (2d) 63 (1954).

In prosecution for assault and battery with intent to kill, where testimony not clear as to instrument used in striking, de-

fendant should not have been sentenced to fifteen years which would be proper only where deadly weapon used as set forth in section 16-333, but should have been sentenced under provisions of § 17-553 construed with this section. State v. Self, ... S. C., 82 S. E. (2d) 63 (1954).

§ 17-553. Sentence where no punishment is provided.

This section and § 17-552 must be construed together.

In accord with this catchline in Code. See State v. Self, ... S. C., 82 S. E. (2d) 63 (1954).

Supreme Court without jurisdiction where no abuse of discretion and within limits.—The Supreme Court has no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by law and in the discretion of trial judge, and is not the result of partiality, prejudice, oppression or corrupt motive. State v. Hall, 224 S. C. 546, 80 S. E. (2d) 239 (1954).

In prosecution for assault and battery with intent to kill, where testimony not clear as to instrument used in striking, defendant should not have been sentenced to fifteen years which would be proper only where deadly weapon used as set forth in section 16-333, but should have been sentenced under provisions of this section construed with § 17-552. State v. Self, ... S. C., 82 S. E. (2d) 63 (1954).

Sentence of two years for unlawful manufacture of liquors, even though a first offense, was, although somewhat harsh, not excessive where record did not disclose partiality, prejudice, oppression or corrupt motive on part of sentencing judge in exercise of his discretion. State v. Hall, 224 S. C. 546, 80 S. E. (2d) 239 (1954).

A ten-year sentence for assault and battery with intent to kill, to commence after the service of a two-year sentence which defendant is in the process of serving, does not amount to cruel and unusual punishment and does not violate this section. State v. King, 222 S. C. 108, 71 S. E. (2d) 793 (1952).

The punishment imposed under this section for conspiracy to commit a crime may exceed the penalty provided by statute for the completed offense. State v. Ferguson, 221 S. C. 300, 70 S. E. (2d) 355 (1952); State v. McIntire, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

Cited in State v. Goodall, 221 S. C. 175, 69 S. E. (2d) 915 (1952), dis. op. of Taylor, J.

§ 17-554. Able-bodied male convicts to work on county chain gangs.

Applied in Maxey v. Manning, 224 S. C. 320, 78 S. E. (2d) 633 (1953).

Title 18.**Dams and Drains; Sanitary and Drainage Commissions and Districts.**

Chap. 1. Dams, § 18-8.

2. Rights of Way for Drainage, § 18-71.

6. Certain Local Provisions, § 18-752.

CHAPTER 1.**DAMS.**

Sec.

18-8. Same; exceptions for Florence and Pickens Counties.

§ 18-8. Same; exceptions for Florence and Pickens Counties.

In *Florence* and *Pickens* Counties the powers conferred by § 18-7 shall apply only to mill ponds and dams.

1942 Code § 6156; 1932 Code §§ 1375, 6156; Civ. C. '22 § 3210; Civ. C. '12 § 2265; Civ. C. '02 § 1488; Cr. C. '22 § 285; G. S. 1183; R. S. 1279; 1881 (17) 888; 1882 (18) 48; 1883 (18) 563; 1888 (20) 59; 1889 (20) 373; 1893 (21) 481; 1896 (22) 257; 1913 (28) 65; 1914 (28) 11; 1916 (29) 748; 1952 (47) 2000.

Effect of amendment.—The amendment formerly included within the scope of the eliminated Darlington County which was section.

CHAPTER 2.**RIGHTS OF WAY FOR DRAINAGE.****Article 2.****Commissioners of Drainage and Health in Certain Counties.**

Sec.

18-71. Commissioners of health and drainage in certain counties.

ARTICLE 2.*Commissioners of Drainage and Health in Certain Counties.***§ 18-71. Commissioners of health and drainage in certain counties.**

The governing body of the counties of *Abbeville*, *Beaufort*, *Chester*, *Colleton*, *Dillon*, *Florence*, *Greenville*, *Horry*, *Laurens*, *Marion*, *Marlboro*, *Oconee*, *Pickens*, *Spartanburg*, *Union* and *York*, respectively, may, in addition to the duties otherwise imposed on them by law, act as commissioners of health and drainage.

1942 Code § 6156; 1932 Code §§ 1375, 6156; Civ. C. '22 § 3210; Civ. C. '12 § 2265; Civ. C. '02 § 1488; Cr. C. '22 § 285; G. S. 1183; R. S. 1279; 1881 (17) 888; 1882 (18) 48; 1883 (18) 563; 1888 (20) 59; 1889 (20) 373; 1893 (21) 481; 1896 (22) 257; 1913 (28) 65; 1914 (28) 11; 1916 (29) 748; 1952 (47) 2000.

Effect of amendment.—The amendment formerly included within the scope of the eliminated Darlington County which was section.

CHAPTER 6.**CERTAIN LOCAL PROVISIONS.**

Sec.

18-752. [Repealed.]

§ 18-752. Canals in St. Helena Township, Beaufort County.

Repealed by A. & J. R. 1953 (48) 356.

Title 19.**Decedents' Estates.**

- Chap. 2. Descent and Distribution, § 19-52.11.
 3. Dower, Curtesy and Jointure, §§ 19-129, 19-146.
 4. Wills, § 19-221.
 6. Personal Representatives and Administration of Estates, § 19-483.

CHAPTER 2.**DESCENT AND DISTRIBUTION.**

Sec.

19-52.11. Inheritance by or from adopted children.

§ 19-52. Distribution of property in case of intestacy.**I. GENERAL CONSIDERATION.**

The court is not warranted in limiting the language of this section to a narrower meaning than the words used import. It must be assumed that the legislature chose its language with care to express its intent and used the words in their ordinary and common acceptance. *Kinard v. Moore*, 220 S. C. 376, 68 S. E. (2d) 321 (1951).

Half blood takes with whole blood.

Our court has consistently rejected the frequently urged contention that half blood relatives are postponed to whole blood relatives by our statute of descent and distribution, and has limited such postponement to the specific instances enumerated in the statute. *Kinard v. Moore*, 220 S. C. 376, 68 S. E. (2d) 321 (1951).

III. WHO CAN INHERIT.

The words "uncles and aunts" as used in subsec. (6) do not mean uncles and aunts of the whole blood only. *Kinard v. Moore*, 220 S. C. 376, 68 S. E. (2d) 321 (1951).

And first cousins of the whole blood and of the half blood are admitted equally to the succession of intestate estates. *Kinard v. Moore*, 220 S. C. 376, 68 S. E. (2d) 321 (1951).

Under subsec. (6) first cousins take by representation of their respective parents—that is, per stirpes instead of per capita. *Kinard v. Moore*, 220 S. C. 376, 68 S. E. (2d) 321 (1951).

And relatives more remote than children of deceased uncles or aunts are excluded. The court may not, by construction, extend the statute to include children of deceased children of deceased uncles or aunts. *Kinard v. Moore*, 220 S. C. 376, 68 S. E. (2d) 321 (1951).

§ 19-52.11. Inheritance by or from adopted children.

Whenever a child has been legally adopted, such child shall inherit from the adopting parents, and from each of them, and the adopting parents and each or either of them shall inherit from the adopted child, to the same extent as if he were a natural child of the adopting parents. For all inheritance purposes without exception the adopted child shall be considered a natural child of the adopting parents and in the event of the death of such adopted child, his estate shall ascend, descend and be distributed as is otherwise provided by law for natural born children of the same family, to the exclusion of the natural or blood parents of such child. When one of the natural parents be united in bonds of matrimony to the other adopting parent then in such event the rules of inheritance as above set out shall attach as if such child were the natural child of both such parents. A natural child shall inherit from an adopted child and an adopted child shall inherit from a natural child as if they were natural children of the adopting parent or parents, and in like manner adopted children of the same family shall inherit from each other.

1954 (48) 1763.

§ 19-53. Inheritance by or from illegitimates.

Cross reference.—As to inheritance by or from adopted children, see § 19-52.11.

§ 19-55. Distribution of a joint tenancy.

Right of survivorship may be expressly created by will or deed.—This section only abolished survivorship as an incident of the common-law estate of joint tenancy, and was never intended to prevent the cre-

ation of the right of survivorship when expressly provided for in a will or deed. *Davis v. Davis*, 223 S. C. 182, 75 S. E. (2d) 46 (1953).

CHAPTER 3.**DOWER, CURTESY AND JOINTURE.****Article 3.****Forfeiture of Dower.**

Sec.

19-129. Dower rights barred in property sold for taxes.

Article 4.**Barring Dower of Insane Wife.**

Sec.

19-146. Proceedings as to certain old deeds to bar dower.

ARTICLE 2.*Renunciation of Dower.***§ 19-111. Renunciation of dower.**

Right of dower is a definite institution of the State, which is highly favored, and although dower cannot be properly denominated as an estate in lands or a vested interest therein, it is a substantial right of property and its present value may be judicially ascertained and protected. *Shelton v. Shelton*, ... S. C., 83 S. E. (2d) 176 (1954).

Inchoate right of wife is always subject to any encumbrance or infirmity in husband's title existing at time he became seized, and is subject to any incident attached to it by law. *Shelton v. Shelton*, ... S. C., 83 S. E. (2d) 176 (1954).

Wife of cotenant not necessary party in partition proceeding, and when lands sold under decree for that purpose, her contingent right of dower divested and purchaser takes title disencumbered of any subordinate right of dower. *Shelton v. Shelton*, ... S. C., 83 S. E. (2d) 176 (1954).

When wife renounces dower on husband's mortgage and land sold in foreclo-

sure in his lifetime, she has no right of dower in land or in surplus proceeds of sale even in cases where mortgage indebtedness represents only small portion of value of land. *Shelton v. Shelton*, ... S. C., 83 S. E. (2d) 176 (1954).

Eminent domain defeats dower.—As between holder of an inchoate right of dower and the sovereign, or political unit to which right of eminent domain has been delegated, wife is divested of any dower interest in land when condemned and compensation paid. *Shelton v. Shelton*, ... S. C., 83 S. E. (2d) 176 (1954).

Wife not entitled to any portion of condemnation compensation.—When, during lifetime of husband, sovereign exercises paramount right of eminent domain, wife not entitled on account of her inchoate right of dower to have any portion of compensation either paid to her directly or set aside for her benefit upon contingency of her surviving husband. *Shelton v. Shelton*, ... S. C., 83 S. E. (2d) 176 (1954).

ARTICLE 3.*Forfeiture of Dower.***§ 19-129. Dower rights barred in property sold for taxes.**

When real property is sold for failure to pay taxes thereon and a deed delivered by the proper authority, all inchoate rights of dower of the defaulting taxpayer's wife shall be forever barred.

1953 (48) 161.

ARTICLE 4.*Barring Dower of Insane Wife.***§ 19-146. Proceedings as to certain old deeds to bar dower.**

For the purpose of divesting the rights of dower of a mentally incompetent wife of a married man, now outstanding in real estate granted, sold, aliened, mortgaged or otherwise incumbered prior to December 23 1885, the procedure outlined in §§ 19-141 to 19-143 shall be followed. In case of the loss of the original deed the

certificate by the probate judge shall be indorsed across the record in the office where the original was recorded.

1942 Code § 8601; 1932 Code § 8601; Civ. C. '22 § 5253; Civ. C. '12 § 3483; Civ. C. '02 § 2397; R. S. 1913; 1885 (19) 169; 1952 (47) 2042.

Effect of amendment.—The amendment substituting the phrase “mentally incompetent wife” for the former reference to the “insane wife.”

CHAPTER 4. WILLS.

Article 2. Revocation.

Sec.

19-221. How wills revoked.

ARTICLE 2.

Revocation.

§ 19-221. How wills revoked.

No will or testament in writing of any real or personal property or any clause thereof shall be revocable but by some other will or codicil in writing, or other writing declaring the same, attested and subscribed by three witnesses as required by § 19-205, or by destroying or obliterating the same by the testator himself, or some other person in his presence, and by his directions and consent.

1942 Code § 8921; 1932 Code § 8921; Civ. C. '22 § 5341; Civ. C. '12 § 3569; Civ. C. '02 § 2481; G. S. 1859; R. S. 1993; 1712 (2) 526; 1789 (5) 107; 1824 (6) 238; 1954 (48) 1745.

Effect of amendment.—The amendment rearranging last part thereof and changed “and” after “destroying” to “or”. Quoted in *Stevens v. Royalls*, 223 S. C. 510, 77 S. E. (2d) 198 (1953).

ARTICLE 3.

Construction and Effect.

§ 19-231. Property acquired after execution of will.

After-acquired property passes under the will if there is any provision of the will covering it. *Cornelson v. Vance*, 220 S. C. 47, 66 S. E. (2d) 421 (1951).

§ 19-233. Power of appointment executed by general gift.

Quoted in *Rogers v. Rogers*, 221 S. C. 360, 70 S. E. (2d) 637 (1952).

§ 19-238. Excessive legacies to bastards or women living in adultery.

Cross reference.—As to inheritance by or from adopted child, see § 19-52.11.

ARTICLE 5.

Probate of Wills Probated Out of State.

§ 19-281. Wills probated in other states admitted to probate in this State.

Applied in *Collins v. Collins*, 219 S. C. 1, 63 S. E. (2d) 811 (1951).

§ 19-286. Foreign probates admitted to probate upon exemplification.

Application of section to will of personalty.—This section authorizes any interested party, under proper circumstances, to contest the validity of a foreign will admitted to probate in common form in this State even though the property situated in this State consists only of personalty, but it was not intended to give jurisdiction to the courts of this State to determine the validity of a foreign will in so far as it relates to personal property located in the state of the testator's domicile. *Collins v. Collins*, 219 S. C. 1, 63 S. E. (2d) 811 (1951).

Probate in solemn form in court of decedent's domicile is conclusive.—This section clearly contemplates, certainly as to personal property situated in this State, that if a foreign will has been proved in solemn form in the courts of decedent's domicile, such an adjudication would be conclusive here. *Collins v. Collins*, 219 S. C. 1, 63 S. E. (2d) 811 (1951).

And foreign judgment adjudicating validity of will should be recognized.—Whether or not an adjudication by the courts of the testator's domicile as to the validity of his will is, under the full faith

and credit clause of the federal Constitution, conclusive upon the courts of other states in so far as personal property is concerned, ordinarily recognition should be given to such judgment upon principles of comity. *Collins v. Collins*, 219 S. C. 1, 63 S. E. (2d) 811 (1951).

Stay of proceedings pending determination of validity of will by court of domicile.—Ordinarily where there is a contest as to the validity of a will transmitting per-

sonal property located in two or more states, the courts in the ancillary jurisdiction should stay any proceedings instituted there affecting the validity of the instrument until the courts of the domiciliary jurisdiction have had a reasonable opportunity to determine the question, particularly where a similar rule is followed by the courts of the testator's domicile. *Collins v. Collins*, 219 S. C. 1, 63 S. E. (2d) 811 (1951).

CHAPTER 6.

PERSONAL REPRESENTATIVES AND ADMINISTRATION OF ESTATES.

Article 4.

Payment or Compromise of Debts.

Sec.

19-483. Limitation of suits on disallowed claims.

ARTICLE 4.

Payment or Compromise of Debts.

§ 19-473. Notice to creditors; time allowed for ascertainment of debts.

Cited in *J. F. Floyd Mortuary v. Newman*, 222 S. C. 421, 73 S. E. (2d) 444

(1952); *Dubuque Fire & Marine Ins. Co. v. Wilson*, 213 F. (2d) 115 (1954).

§ 19-474. Claims not filed in eleven months barred.

Editor's note.—"proved" in catchline line changed to "filed".

The statutes requiring the representatives of an estate to give notice to creditors are designed for the personal protection of executors and administrators, and do not

bar a creditor who fails to comply with the statutes from enforcing his claim against the persons into whose possession the assets of the estate have come. *Dubuque Fire & Marine Ins. Co. v. Wilson*, 213 F. (2d) 115 (1954).

§ 19-475. No liability if creditor neglects to give statement.

Cited in *J. F. Floyd Mortuary v. Newman*, 222 S. C. 421, 73 S. E. (2d) 444

(1952); *Dubuque Fire & Marine Ins. Co. v. Wilson*, 213 F. (2d) 115 (1954).

§ 19-483. Limitation of suits on disallowed claims.

When any claim against the estate of a decedent has been or shall be:

- (1) Filed in the probate court in which such estate is being administered or
- (2) Filed with the executor or administrator of such estate;

And such claimant or his attorney who has filed such claim, shall have received notice in writing, either:

- (a) From the said probate court that such claim has been disallowed or
- (b) From the executor or administrator of such estate, or the attorney for such executor or administrator, that such claim is denied and will be contested;

Such claim shall be forever barred unless within six months after receipt of such notice action shall be brought to enforce such claim.

1942 Code § 8999-1; 1941 (42) 293; 1948 (45) 1969; 1952 (47) 2147.

Effect of amendment.—Formerly a claim filed with the personal representative or rejected by a personal representa-

tive was not affected by the section but only claims filed with and disallowed by the probate court.

ARTICLE 5.

Sale of Real Estate by Probate Court to Pay Debts.

§ 19-492. When probate judge may sell real estate of deceased to pay debts.

Cited in *J. F. Floyd Mortuary v. Newman*, 222 S. C. 421, 73 S. E. (2d) 444 (1952).

§ 19-493. Application for sale and summons thereon.

Quoted in *J. F. Floyd Mortuary v. Newman*, 222 S. C. 421, 73 S. E. (2d) 444 (1952).

ARTICLE 7.

*Returns and Commissions.***§ 19-531. Filing of annual return.**

Cited in *Fouche v. Royal Indemnity Co.*, 217 S. C. 147, 60 S. E. (2d) 73 (1950).

§ 19-534. Commissions.

Commissions limited to money received.—In construing this section, the Supreme Court has repeatedly held that executors and administrators must actually receive and handle money in order to justify an allowance of the statutory commissions,

and jurisdiction of the probate court in allowing executors' commissions is limited to the provisions of this section. *Anderson v. Bowers*, 117 F. Supp. 884 (1954). (Ed. note: This has reference to this section prior to the 1943 amendment.)

§ 19-535. Action by representatives for additional compensation.

Jurisdiction of court of common pleas exclusive.—If an executor or administrator desires additional compensation for extraordinary service, jurisdiction is vested ex-

clusively in the court of common pleas. *Anderson v. Bowers*, 117 F. Supp. 884 (1954).

ARTICLE 8.

*Settlement and Distribution.***§ 19-554. When actions may be commenced against executor or administrator.**

Cited in *J. F. Floyd Mortuary v. Newman*, 222 S. C. 421, 73 S. E. (2d) 444 (1952).

ARTICLE 10.

*Nonresidents as Representatives; Foreign Representatives.***§ 19-591. Requirement for nonresident to act as representative; foreign testamentary trustee.**

A nonresident administrator is not considered as a South Carolina administrator for the purpose of giving jurisdiction to

the federal courts on the ground of diversity of citizenship. *Mason v. Helms*, 97 F. Supp. 312 (1951).

CHAPTER 7.

LIABILITY OF HEIRS AND DEVISEES.

§ 19-704. Creditors preferred.

This section does not unconstitutionally deprive a creditor of remedy for the collection of his debt and, therefore, his property, without due process, in view of the remedy provided by § 19-492 et seq., whereby a creditor may apply to the probate judge, at any time after the qualification of any executor or administrator to have the decedent's real estate sold to pay

debts. *J. F. Floyd Mortuary v. Newman*, 222 S. C. 421, 73 S. E. (2d) 444 (1952).

"Action brought", as used in this section, is not the mere filing of claim in the probate court or with the executor or administrator. *J. F. Floyd Mortuary v. Newman*, 222 S. C. 421, 73 S. E. (2d) 444 (1952).

Title 20.**Domestic Relations.**

- Chap. 1. Marriage, §§ 20-6.1 to 20-32.
 2. Divorce, §§ 20-101, 20-118.
 4. Custody, Care and Support, §§ 20-301 to 20-367.

CHAPTER 1.**MARRIAGE.****Article 1.****General Provisions.**

Sec.

20-6.1. Children legitimate when either party marries in good faith, etc.

Sec.

20-30.1. Special provisions for Jasper County.

20-30.2. Special provisions for Horry County.

20-30.3. Special provisions for York County.

20-32. Disposition of license fee.

Article 2.**Marriage License.**

20-23.1. [Repealed.]

ARTICLE 1.*General Provisions.***§ 20-1. Who may contract matrimony.**

Cited in *Dillon County v. Maryland Cas. Baker v. Allen*, 220 S. C. 141, 66 S. E. (2d) 618 (1951), dis. op. of Baker, C. J.

§ 20-6.1. Children legitimate when either party marries in good faith, etc.

When either of the contracting parties to a marriage that is void under the provisions of § 20-6 entered into the marriage contract in good faith on or after April 13 1951 and in ignorance of the incapacity of the other party, any children born of the marriage shall be deemed legitimate and have the same legal rights as a child born in lawful wedlock.

1951 (47) 150; 1954 (48) 1770.

Effect of amendment.—The amendment added "on or after April 13, 1951".

ARTICLE 2.*Marriage License.***§ 20-21. License required for marriage.**

Cited in *Baker v. Allen*, 220 S. C. 141, 66 S. E. (2d) 618 (1951), dis. op. of Baker, C. J.

§ 20-23. Issue of license.

Cited in *Dillon County v. Maryland Cas. Co.*, 217 S. C. 66, 59 S. E. (2d) 640 (1950).

§ 20-23.1. Same; additional fee in York County.

Repealed by A. & J. R. 1954 (48) 1747.

Cross reference.—See now § 20-30.3.

§ 20-28. Probate judge to keep record; certified copies.

Cross reference.—As to issue of certified copies without charge, see §§ 32-1124 and 44-661.

§ 20-30. Special provisions for Dillon County.

Constitutionality. — The fact that the duties of the probate judge mentioned in this section as to performing marriages during office hours are not imposed upon other probate judges does not have the effect of making this section special legislation of a kind prohibited by S. C. Const., Art. 3, § 34. *Dillon County v. Maryland*

Cas. Co., 217 S. C. 66, 59 S. E. (2d) 640 (1950).

No right of the probate judge of Dillon County is violated by this section in imposing upon him the duty of performing marriage ceremonies during office hours. *Dillon County v. Maryland Cas. Co.*, 217 S. C. 66, 59 S. E. (2d) 640 (1950).

And neither he nor his surety may attack its validity.—In an action for an accounting based on an alleged breach of duty by the probate judge in failing to collect license fees claimed to be due to Dillon County under this section, neither the probate judge nor his surety may attack the validity of this section, fixing the fee to be charged for marriage licenses. *Dillon County v. Maryland Cas. Co.*, 217

S. C. 66, 59 S. E. (2d) 640 (1950). See *Dillon County v. Maryland Cas. Co.*, 220 S. C. 204, 67 S. E. (2d) 306 (1951); *Dillon County v. Maryland Cas. Co.*, 223 S. C. 233, 75 S. E. (2d) 254 (1953).

A taxpayer cannot maintain an action for a declaratory judgment with respect to the constitutionality of this section, where there is no showing that he would be injuriously affected by the unconstitutionality of the section. *Manning v. Dillon County*, 223 S. C. 240, 75 S. E. (2d) 250 (1953).

Actions to recover portion of fee paid under protest.—See *Baker v. Allen*, 220 S. C. 141, 66 S. E. (2d) 618 (1951); *Whittington v. Allen*, 223 S. C. 148, 74 S. E. (2d) 579 (1953).

§ 20-30.1. Special provisions for Jasper County.

The judge of probate of *Jasper* County, when requested, shall perform marriage ceremonies during official office hours. He shall charge and collect three dollars for each marriage license issued by him, regardless of whether it is issued during office hours or not. He shall make no charge for issuing certified copies of marriage certificates. He shall make no charge for the performance of marriage ceremonies during office hours. He or someone acting in his behalf shall collect such fees and they shall, together with all other fees and commissions received by the probate judge, be turned over monthly to the treasurer of said county.

1953 (48) 294.

§ 20-30.2. Special provisions for Horry County.

The judge of probate of *Horry* County when requested shall perform marriage ceremonies during office hours. He shall charge and collect five dollars for each marriage license issued by him, regardless of whether it is issued during office hours or not. He shall make no charge for issuing certified copies of marriage certificates or for the performance of marriage ceremonies during office hours. Three dollars of each marriage fee shall go into the general fund of the county and the remaining two dollars shall go to the Horry County Memorial Library.

1954 (48) 1531.

§ 20-30.3. Special provisions for York county.

The judge of probate of *York* County when requested shall perform marriage ceremonies during office hours. He shall charge and collect one dollar for each application for such license and four dollars for each marriage license issued by him, regardless of whether it is issued during office hours or not. He shall make no charge for issuing certified copies of marriage certificates or for the performance of marriage ceremonies during office hours.

1954 (48) 1747.

§ 20-32. Disposition of license fee.

(4) In *Abbeville, Bamberg, Edgefield, Greenville, Lancaster, Lee* and *Williamsburg* Counties the probate judge shall retain the sum of fifty cents as his compensation.

(6) In *Marlboro* County the license fee of one dollar shall be turned over monthly by the judge of probate to the county treasurer and go to the general fund of said county.

1953 (48) 294, 422; 1954 (48) 1747.

Effect of amendments.—In item (4) 1953 p. 294 eliminated Jasper County (see § 20-30.1) and 1954 p. 1747 eliminated York County (see §§ 14-3625 and 20-30.3). The fees were formerly turned over to the school

fund of the county in item (6) until changed by 1953 (48) 422. The other portions of the section were not affected by the amendment and are therefore not set forth above.

CHAPTER 2.

DIVORCE.

Article 1.

Divorces in This State.

Sec.

20-101. Grounds for divorce.

20-118. Divorced wife barred of dower.

ARTICLE 1.

Divorces in This State.

§ 20-101. Grounds for divorce.

No divorce from the bonds of matrimony shall be granted except upon one or more of the following grounds, to-wit:

- (1) Adultery;
- (2) Desertion for a period of one year;
- (3) Physical cruelty; or
- (4) Habitual drunkenness.

Habitual drunkenness shall be construed to include such drunkenness caused by the use of any narcotic drug.

1949 (46) 216; 1952 (47) 2142.

Effect of amendment.—The amendment added the last paragraph.

The causes for which separate maintenance and support may be granted are not confined to those which constitute grounds for divorce. *Mincey v. Mincey*, 224 S. C. 520, 80 S. E. (2d) 123 (1954).

The essentials of desertion are: (1) Cessation from cohabitation; (2) intent on the part of the absenting party not to resume it; (3) absence of the opposite party's consent; and (4) absence of justification. Of course, the cessation of cohabitation must be for the required statutory period before there can be a divorce on the ground of desertion. *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

A divorce may be granted in this State on the ground of constructive desertion. *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

Elements of constructive desertion. — Generally speaking, it may be said that there is constructive desertion where an existing cohabitation is intentionally brought to an end by the misconduct of one of the spouses, compelling the other to leave the marital home. An intent to desert is an indispensable element. However, it is not a necessary ingredient in constructive desertion that the husband shall entertain, in connection with the acts complained of, a settled purpose to drive his wife from him. It is enough if such is the natural consequence of his acts. *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

But misconduct must amount to one of constitutional grounds.—In order to constitute constructive desertion, the abandoning party seeking to make a technical deserter out of the one abandoned, must

establish misconduct on the part of the other in itself, and independently, amounting to one or more of the four grounds permitted by the constitutional amendment. *Mincey v. Mincey*, 224 S. C. 520, 80 S. E. (2d) 123 (1954).

Constructive desertion not established.—Course of conduct by husband consisting of personal indignities, but without physical cruelty, indiscreet and undue attentiveness to another woman of a suspicious nature, but without proof of adultery, intoxication, without habitual drunkenness, which made living conditions for wife intolerable, and continued cohabitation impossible, not sufficient to constitute constructive desertion. *Mincey v. Mincey*, 224 S. C. 520, 80 S. E. (2d) 123 (1954).

Refusal of wife to go with husband to home of his choice.—The husband has the right, acting reasonably, to choose where the family shall reside, and when the wife refuses to go with him she is guilty of desertion. *Wolfe v. Wolfe*, 220 S. C. 437, 68 S. E. (2d) 348 (1951).

There can be no desertion where the separation of the spouses is upon mutual consent. *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

And the resumption of cohabitation terminates the desertion. *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

The only form of cruelty recognized in South Carolina as a ground for divorce is "Physical cruelty." *Barstow v. Barstow*, 223 S. C. 136, 74 S. E. (2d) 541 (1953).

Physical cruelty defined.

In accord with paragraph under this catchline in Code. See *Barstow v. Barstow*, 223 S. C. 136, 74 S. E. (2d) 541 (1953).

Physical cruelty on part of wife.—While

severe or dangerous physical assaults by the wife on her husband may constitute physical cruelty and be a ground for divorce, slight acts of violence by a wife from which the husband can easily protect himself do not constitute physical cruelty entitling him to a divorce. *Barstow v. Barstow*, 223 S. C. 136, 74 S. E. (2d) 541 (1953).

Burden of proof as to constructive desertion.—Where a wife is seeking the affirmative relief of divorce based on a claim

§ 20-105. Jurisdiction of actions for divorce.

An action for divorce is within the equity jurisdiction of the court, and in accord with the well settled rule, findings of fact by a master or referee, concurred in by a circuit judge, will not be disturbed by the Supreme Court unless it appears that

§ 20-106. Venue.

A divorce action may be brought in the county in which the parties last resided as

§ 20-112. Alimony; suit money.

Wife need only establish prima facie case.—The wife is regarded as the privileged suitor and in determining whether temporary alimony and counsel fees shall be allowed, it is not necessary to examine into the merits of the controversy. But to entitle the wife to such relief, it is incumbent upon her to establish a prima facie case. *Poliakoff v. Poliakoff*, 221 S. C. 391, 70 S. E. (2d) 625 (1952).

But allowance subject to review and reversal.—Right of wife-litigant to alimony pending divorce proceedings is expressly vouchsafed to her by this section, which appears to be merely enactment of rules of former decisions with respect to suits for alimony, and motion by wife on verified complaint without supporting papers not a fatal deficiency, but, privileged suitor though she is, burden of proof is upon her, and allowance of alimony pendente lite is within discretion of court when wife establishes prima facie right thereto, which is subject to review and reversal on appeal. *Simonds v. Simonds*, ... S. C., 81 S. E. (2d) 344 (1954).

Wife's verified answer is sufficient to make out prima facie case.—Generally speaking, where the husband sues the wife for divorce and the only showing before the court is his verified complaint and a verified answer by the wife denying the grounds for divorce and showing that she is without funds to defend the suit or maintain herself during the pendency of the action, a prima facie case is made for the allowance of temporary alimony and counsel fees. *Poliakoff v. Poliakoff*, 221 S. C. 391, 70 S. E. (2d) 625 (1952).

If made in good faith.—If it appears that the wife's denial is not made in good faith, but is merely sham and for the pur-

pose of constructive desertion by her husband, it is incumbent upon her to establish the essential elements of desertion, some of which need not be shown in an action for separate maintenance. *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

Sections 20-101 to 20-148 cited in *Mincey v. Mincey*, 224 S. C. 520, 80 S. E. (2d) 123 (1954).

Cited in *Simonds v. Simonds*, ... S. C., 81 S. E. (2d) 344 (1954).

such findings are without evidentiary support or are against the clear preponderance of the evidence. *Mincey v. Mincey*, 224 S. C. 520, 80 S. E. (2d) 123 (1954).

Stated in *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

husband and wife. *Thomas v. Thomas*, 218 S. C. 235, 62 S. E. (2d) 307 (1950).

pose of protracting the period during which the injured husband may be compelled to support her, application for suit money and temporary alimony will be denied. *Poliakoff v. Poliakoff*, 221 S. C. 391, 70 S. E. (2d) 625 (1952).

Stated in *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

Income taxes and other factors to be taken into account.—Income taxes are so substantial in amount and proportion of one's income that they cannot, in reason and fairness, be left out of account in determining income on motion for alimony pendente lite; and other factors for consideration are wife's separate estate and income, to whom payments will be taxable, and that amount of income tax paid by husband on joint return with wife may be of lesser amount than he will have to pay living separately; and where in argument on motion for temporary alimony it was mistakenly contended that payments of such alimony by husband would be deductible by him and taxable to wife, and it did not appear what influence, if any, tax status of parties had in arriving at amount of award, amount fixed in order for alimony pendente lite reversed and remanded for reconsideration. *Simonds v. Simonds*, ... S. C., 81 S. E. (2d) 344 (1954). (Editor's note. The rule that temporary alimony payments are not deductible by husband and not taxable to wife was not changed by Internal Revenue Code of 1954).

The causes for which separate maintenance and support may be granted are not confined to those which constitute grounds for divorce. *Mincey v. Mincey*, 224 S. C. 520, 80 S. E. (2d) 123 (1954).

§ 20-113. Award of alimony, etc.

This section does not abrogate or impair the original inherent power of equity to grant alimony independent of a divorce. *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

A court may decree separate maintenance although a divorce is denied. *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

§ 20-113.1. Allowance of alimony and suit money in divorce actions a mensa et thoro.

Quoted in *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

§ 20-115. Care, custody and maintenance of children.

Divided custody not disturbed on appeal.—Where judge of juvenile—domestic relations court and circuit judge concurred in recommendation of master awarding divided custody of children, Supreme Court, while viewing divided custody with concern, did not feel justified in disturbing such award, especially since application may be made to the court should present ar-

rangement prove inimical to interest of children. *Mincey & Mincey*, 224 S. C. 520, 80 S. E. (2d) 123 (1954).

Applied in *Machado v. Machado*, 220 S. C. 90, 66 S. E. (2d) 629 (1951); *Wolfe v. Wolfe*, 220 S. C. 437, 68 S. E. (2d) 348 (1951); *Poliakoff v. Poliakoff*, 221 S. C. 391, 70 S. E. (2d) 625 (1952).

§ 20-118. Divorced wife barred of dower.

On the granting of any final decree of divorce the wife shall thereafter be barred of dower in lands formerly owned, then owned or thereafter acquired by her former husband.

1949 (46) 216; 1950 (46) 2251; 1953 (48) 318.

Effect of amendment.—The amendment added the words "formerly owned."

CHAPTER 4.**CUSTODY, CARE AND SUPPORT.****Article 1.****General Provisions.**

Sec.

20-301. Ill-treating children, apprentices, etc.

Article 2.**Uniform Support of Dependents Act.**

20-311 to 20-336. [Repealed.]

Article 3.**Uniform Reciprocal Enforcement of Support Act.**

20-337. Citation of article.

20-338. Purposes.

20-339. Definitions.

20-340. Interpretation.

20-341. State information agency; duties.

20-342. Article alternative civil remedy.

20-343. No jurisdiction of parties in other proceedings.

20-344. Type of proceedings court conduct.

20-345. Duties of support applicable to obligor.

20-346. Same; when in this State.

20-347. Same; enforceable by complaint; jurisdiction of the court.

20-348. State or political subdivision furnishing support may invoke article.

20-349. Legal custodian may bring complaint for minor obligee.

Sec.

20-350. Plaintiff's counsel.

20-351. Information to be contained in complaint.

20-352. Transmittal of complaint, etc. to responding state court.

20-353. Responding state may order defendant furnish support.

20-354. Duties of court as responding state on receipt of complaint, etc.

20-355. Same; failure acquire jurisdiction.

20-356. Same; order of support not to supersede previous order of support in divorce or separate maintenance action.

20-357. Same; transmittal of copies of support orders.

20-358. Same; conditions may require for compliance with orders.

20-359. Same; transmittal of payments made by defendants.

20-360. Rules of evidence.

20-361. Husband and wife competent witnesses.

20-362. Communications between husband and wife not privilege.

20-363. Costs and fees; payment.

20-364. Courts receive and disburse payments.

20-365. Return of persons without State for failure support dependents;

Sec.		Sec.	
	release of such persons to other states.		submits to jurisdiction and provides support.
20-366.	Same; inapplicable when obligor	20-367.	Incarceration of defendant.

ARTICLE 1.

*General Provisions.***§ 20-301. Ill-treating children, apprentices, etc.**

Whoever, being legally liable, either as parent, guardian, master or mistress, to provide for any child, apprentice, servant or mentally incompetent or helpless person necessary food, clothing, lodging, medical treatment or other treatment as recognized by § 56-1354 shall willfully and without lawful excuse refuse or neglect to provide for the same or shall unlawfully and maliciously do or cause to be done any bodily harm to that person so that his life shall be endangered or his health or comfort shall have been, or is likely to be, permanently injured, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars or imprisoned for not exceeding two years with or without hard labor, or both, at the discretion of the court.

1942 Code § 1124; 1932 Code § 1124; Cr. C. '22 § 21; Cr. C. '12 § 166; Cr. C. '02 § 135; G. S. 2476; R. S. 133; 1874 (15) 704; 1927 (35) 106, 250; 1952 (47) 2042.

Effect of amendment. — The section amendment substituted the phrase "mentally incompetent" person.

§ 20-303. Husband's obligation to support wife and children.

I. GENERAL CONSIDERATION.

The basic reason for the enactment of this section is the important responsibility of the State through its courts, to protect the rights of a wife and minor unmarried children dependent for support upon the husband and father, respectively. State v. Caldwell, 220 S. C. 301, 67 S. E. (2d) 421 (1951).

There is but one offense intended to be legislated against by this statute, to wit, the failure of an able-bodied man or a man capable of earning or making a livelihood, who, without just cause or excuse, abandons or fails to support his wife, or if there be a minor unmarried child or children, fails to support such child or children, or both his wife and minor unmarried child

or children. State v. Caldwell, 220 S. C. 301, 67 S. E. (2d) 421 (1951).

Indictment not bad for duplicity. — When the defendant was charged in one count with failure to supply the actual necessities of life to his wife and his minor unmarried children, two separate and distinct offenses were not alleged in one count, and the indictment was not bad for duplicity. State v. Caldwell, 220 S. C. 301, 67 S. E. (2d) 421 (1951).

II. JUST CAUSE OR EXCUSE.

Burden is on defendant to show just cause or excuse.

In accord with paragraph under this catchline in Code. See State v. Sutherland, 217 S. C. 259, 60 S. E. (2d) 591 (1950).

ARTICLE 2.

*Uniform Support of Dependents Act.***§§ 20-311 to 20-336. Short title; duty of petitioner's representatives in this State.**

Repealed by A. & J. R. 1954 (48) 1421.

Cross reference.—See now §§ 20-337 et seq.

ARTICLE 3.

*Uniform Reciprocal Enforcement of Support Act.***§ 20-337. Citation of article.**

This article may be cited as the Uniform Reciprocal Enforcement of Support Act. 1954 (48) 1421.

§ 20-338. Purposes.

The purposes of this article are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

1954 (48) 1421.

§ 20-339. Definitions.

As used in this article unless the context requires otherwise:

(1) "*State*" includes any state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) "*Initiating state*" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "*Responding state*" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(4) "*Court*" means any court in this State having jurisdiction to determine the liability of persons for the support of dependents and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(5) "*Law*" includes both common and statute law.

(6) "*Duty of support*" includes any duty of support imposed or imposed by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise.

(7) "*Obligor*" means any person owing a duty of support.

(8) "*Obligee*" means any person to whom a duty of support is owed.

1954 (48) 1421.

§ 20-340. Interpretation.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact substantially similar legislation.

1954 (48) 1421.

§ 20-341. State information agency; duties.

The State Department of Public Welfare is hereby designated as the State Information Agency under this article, and it shall:

(1) compile a list of the courts and their addresses in this State having jurisdiction under this article and transmit the same to the state information agency of every other state which has adopted this or a substantially similar article.

(2) maintain a register of such lists received from other states and transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this article.

1954 (48) 1421.

§ 20-342. Article alternative civil remedy.

The remedies herein provided are in addition to and not in substitution for any other remedies.

1954 (48) 1421.

§ 20-343. No jurisdiction of parties in other proceedings.

Participation in any proceedings under this article shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

1954 (48) 1421.

§ 20-344. Type of proceedings court conduct.

The court shall conduct proceedings under this article in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

1954 (48) 1421.

§ 20-345. Duties of support applicable to obligor.

Duties of support applicable under this article are those imposed or imposable under the laws of any state where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

1954 (48) 1421.

§ 20-346. Same; when in this State.

Duties of support arising under the law of this State, when applicable under § 20-345, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

1954 (48) 1421.

§ 20-347. Same; enforceable by complaint; jurisdiction of the court.

All duties of support are enforceable by complaint irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the court as defined in Paragraph (4) of § 20-339.

1954 (48) 1421.

§ 20-348. State or political subdivision furnishing support may invoke article.

Whenever the state or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

1954 (48) 1421.

§ 20-349. Legal custodian may bring complaint for minor obligee.

A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

1954 (48) 1421.

§ 20-350. Plaintiff's counsel.

The circuit solicitor, county solicitor or county attorney, upon the request of the court, the department of welfare or other local welfare representative, shall represent the plaintiff in any proceeding under this article.

1954 (48) 1421.

§ 20-351. Information to be contained in complaint.

The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases, if any, by which he has been or is known, the name of his employer, his fingerprints or social security number.

1954 (48) 1421.

§ 20-352. Transmittal of complaint, etc. to responding state court.

If the court of this State acting as an initiating State finds that the complaint sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and cause three copies of (a) the complaint, (b) its certificate and (c) this article to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward

them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating State.

1954 (48) 1421.

§ 20-353. Responding state may order defendant furnish support.

If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

1954 (48) 1421.

§ 20-354. Duties of court as responding state on receipt of complaint, etc.

When the court of this State, acting as a responding state, receives from the court of an initiating state copies of the papers mentioned in § 20-352, it shall (a) docket the cause, (b) notify the solicitor of the circuit, the county solicitor or the county attorney, (c) set a time and place for a hearing and (d) take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

1954 (48) 1421.

§ 20-355. Same; failure acquire jurisdiction.

If a court of this State, acting as a responding state, is unable to obtain jurisdiction of the defendant or his property due to inaccuracies or inadequacies in the complaint or otherwise, the court shall (a) communicate this fact to the court in the initiating state, (b) on its own initiative use all means at its disposal to trace the defendant or his property and (c) hold the case pending the receipt of more accurate information or an amended complaint from the court in the initiating state.

1954 (48) 1421.

§ 20-356. Same; order of support not to supersede previous order of support in divorce or separate maintenance action.

Any order of support issued by a court of this State when acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

1954 (48) 1421.

§ 20-357. Same; transmittal of copies of support orders.

The court of this State when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

1954 (48) 1421.

§ 20-358. Same; conditions may require for compliance with orders.

In addition to the powers of the foregoing provisions and §§ 20-363 and 20-367, the court of this State when acting as the responding state may subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(1) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(2) To require the defendant to make payments at specified intervals to the clerk of the court or the obligee and to report personally to such clerk at such times as may be deemed necessary.

(3) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

1954 (48) 1421.

§ 20-359. Same; transmittal of payments made by defendants.

The court of this State when acting as a responding state shall have the following duties which may be carried out through the clerk of the court:

(1) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and

(2) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

1954 (48) 1421.

§ 20-360. Rules of evidence.

In any hearing under this law, the court shall be bound by the same rules of evidence that bind juvenile or domestic relations courts or similar courts in this State wherein the strict or technical rules of evidence have been relaxed.

1954 (48) 1421.

§ 20-361. Husband and wife competent witnesses.

Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

1954 (48) 1421.

§ 20-362. Communications between husband and wife not privilege.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this article.

1954 (48) 1421.

§ 20-363. Costs and fees; payment.

A court of this State acting either as an initiating or responding state may in its discretion direct that any part of or all fees and costs incurred in this State, including without limitation by enumeration, fees for filing, service of process, seizure of property and stenographic service of both plaintiff and defendant, or either, shall be paid by the county. Where the action is brought by or through the State or an agency thereof there shall be no filing fee.

1954 (48) 1421.

§ 20-364. Court receive and disburse payments.

The court of this State when acting as an initiating state shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding state.

1954 (48) 1421.

§ 20-365. Return of persons without State for failure support dependents; release of such persons to other states.

The Governor of this State may (a) demand from the Governor of any other state the surrender of any person found in such other state who is charged in this State with the crime of failing to provide for the support of any person in this State and (b) surrender on demand by the Governor of any other state any person found in this State who is charged in such other state with the crime of failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

1954 (48) 1421.

§ 20-366. Same; inapplicable when obligor submits to jurisdiction and provides support.

Any obligor contemplated by § 20-365 who submits to the jurisdiction of the court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or non-support entered in the courts of this State during the period of such compliance.

1954 (48) 1421.

§ 20-367. Incarceration of defendant.

When the court of this State, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction it may (a) as an initiating state request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that be permissible under the law of the responding state or (b) as a responding state, obtain the body of the defendant by appropriate process.

1954 (48) 1421.

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OF
SOUTH CAROLINA
1952

1954 Cumulative Supplement

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Code Commissioner and the Committee on Statutory
Laws of the General Assembly of South Carolina

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TITLES 21 TO 32

Place in Pocket of Volume 3 of Main Set

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ST. MATTHEWS, S. C.

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NOTICE

This pocket supplement is not official. At the direction of the Committee on Statutory Laws the Acts as enacted have been edited in various particulars to conform them to the style and arrangement of the Code of 1952 and to make them more readily usable by the practitioner for ordinary work. For further details see the Foreword in the Pocket Supplement to Volume 1.

Code of Laws of South Carolina 1952

1954 CUMULATIVE SUPPLEMENT

Title 21.

Education.

- Chap. 2. State Superintendent of Education, § 21-21.
5. County Boards of Education, § 21-101.
6. School Districts, §§ 21-119 to 21-201.
8. State Aid for Schools, §§ 21-260 to 21-293.10.
9. School Buildings, §§ 21-330 to 21-340.
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15. Financial Matters, §§ 21-915 to 21-1000.210.
16. Abbeville County, §§ 21-1001.1 to 21-1011.
17. Aiken County, §§ 21-1031 to 21-1085.
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21. Barnwell County, § 21-1352.
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38. Greenville County, §§ 21-2802 to 21-2838.
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40. Hampton County, §§ 21-2975, 21-2983.
41. Horry County, §§ 21-3051 to 21-3082.
42. Jasper County, §§ 21-3101 to 21-3112.
43. Kershaw County, §§ 21-3150 to 21-3177.
44. Lancaster County, §§ 21-3200 to 21-3293.
46. Lee County, §§ 21-3350 to 21-3364.
47. Lexington County, §§ 21-3401 to 21-3423.
48. Marion County, §§ 21-3451, 21-3461.
49. Marlboro County, §§ 21-3504, 21-3508.
51. Newberry County, §§ 21-3591 to 21-3600.
52. Oconee County, §§ 21-3661 to 21-3682.
53. Orangeburg County, §§ 21-3707 to 21-3712.2.
54. Pickens County, §§ 21-3791 to 21-3802.
55. Richland County, §§ 21-3881.1 to 21-3885.
56. Saluda County, §§ 21-3962 to 21-3966.

- 57. Spartanburg County, §§ 21-4000 to 21-4030.
- 58. Sumter County, §§ 21-4050 to 21-4078.
- 59. Union County, §§ 21-4150 to 21-4177.
- 60. Williamsburg County, §§ 21-4200, 21-4201.
- 61. York County, §§ 21-4331 to 21-4416.

CHAPTER 2.

STATE SUPERINTENDENT OF EDUCATION.

Sec.

21-21. Election, bond and salary.

§ 21-21. Election, bond and salary.

* * * The Superintendent of Education shall receive as compensation for his services the sum of ten thousand dollars per annum, payable monthly out of the State Treasury, and his traveling expenses, not exceeding three hundred dollars, shall be paid out of the State Treasury upon duly itemized accounts rendered by him.

1942 Code § 5272; 1932 Code § 5272; Civ. C. '22 § 2532; Civ. C. '12 § 1698; Civ. C. '02 § 1174; 1896 (22) 150; 1901 (23) 750; 1919 (31) 4; 1924 (33) 1182; 1948 (45) 1716; 1954 (48) 1566.

Effect of amendment.—Amendment increased salary to ten thousand dollars from seven thousand five hundred dollars. The section was otherwise unchanged, and is not reproduced here.

CHAPTER 3.

STATE BOARD OF EDUCATION.

§ 21-43. Meetings of Board.

A quorum of the Board must pass on the question whether there is sufficient evidence to justify revoking a teacher's certificate, since the determination of that question clearly constitutes "transacting business." *Pettiford v. South Carolina State Board of Education*, 218 S. C. 322, 62 S. E. (2d) 780 (1950).

But it is not necessary that a quorum take the testimony at the hearings in a

proceeding to revoke a teacher's certificate, and the designation of two members to take the testimony at those hearings and to report such testimony to the full Board in meeting duly assembled does not constitute an unlawful delegation of power. *Pettiford v. South Carolina State Board of Education*, 218 S. C. 322, 62 S. E. (2d) 780 (1950).

CHAPTER 3.1.

STATE EDUCATIONAL FINANCE COMMISSION.

§ 21-56. General duties of the Commission.

Establishment and consolidation of school districts.—The authority vested in the Commission with reference to such matters as the establishment and consolidation of school districts is of an advisory and regulatory nature. *Powers v. State Educational Finance Comm.*, 222 S. C. 433, 73 S. E. (2d) 456 (1952).

The Commission is not empowered by this section to make a consolidation of school districts lying in different counties where either county board of education refuses to agree thereto. *Powers v. State Educational Finance Comm.*, 222 S. C. 433, 73 S. E. (2d) 456 (1952).

§ 21-57. Survey of school system.

Quoted in *Powers v. State Educational Finance Comm.*, 222 S. C. 433, 73 S. E. (2d) 456 (1952).

§ 21-58. Rules and regulations.

Cross reference.—For rules and regulations promulgated under authority of this section, see *Rules and Regulations, Educational Finance Commission*, in Volume 7.

This section does not constitute an unlawful delegation of legislative power. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

The Commission is not empowered by this section to make a consolidation of school districts lying in different counties where either county board of education

refuses to agree thereto. Powers v. State Educational Finance Comm., 222 S. C. 433, 73 S. E. (2d) 456 (1952).

Quoted in Powers v. State Educational Finance Comm., 222 S. C. 433, 73 S. E. (2d) 456 (1952).

CHAPTER 5.

COUNTY BOARDS OF EDUCATION.

Sec.
21-101. Appointment and term.

§ 21-101. Appointment and term.
No employee of a public school system other than the county superintendent of education shall be eligible to serve as a member of a county board of education.
1953 (48) 3.

Effect of amendment.—The amendment added the foregoing paragraph. As the section was otherwise unaffected by the amendment only the new paragraph is set forth above.

Cited in Powers v. State Educational Finance Comm., 222 S. C. 433, 73 S. E. (2d) 456 (1952).

this section is a common one, and does not constitute an illegal delegation of legislative power. State v. Byrnes, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

CHAPTER 6.

SCHOOL DISTRICTS.

Article 1.1.
The School District of Aiken County, Including Areas in Edgefield and Saluda Counties.

Article 6.
Batesburg-Leesville District No. 3 of Lexington and Saluda Counties.

Sec.
21-119. Composition of district, etc.

Sec.
21-200. Financial provisions, trustees, buildings, etc.

Article 4.1.
Areas of Cherokee County in School Districts in Adjoining Counties.

Article 7.
District No. 5, Lexington and Richland Counties.

21-161. Authorization, regulation, etc.

21-201. Trustees, etc.

ARTICLE 1.

General Provisions.

§ 21-111. School districts bodies politic and corporate.
Powers conferred by § 21-111 to 21-114 not superseded or repealed.—See note to § 21-114.

§ 21-112. Alteration of boundaries or division of school districts.
Quoted in Powers v. State Educational Finance Comm., 222 S. C. 433, 73 S. E. (2d) 456 (1952).
School districts may be altered or divided by county boards of education upon compliance with any one of the three enumerated conditions, but they are mutually exclusive. Atty. Gen. Op., Aug. 26, 1954.

§ 21-114. Same; consolidated district for entire county; district formed from two or more counties.
Powers conferred by §§ 21-111 to 21-114 not superseded or repealed.—The powers vested in the county boards of education by §§ 21-111 to 21-114, including the power to create, by the joint action of the boards of education of the counties involved, a school district embracing territory in two or more counties, are preserved, and were not superseded or repealed by the 1951 General Appropriation Act [1951 (47) 546]. Powers v. State Educational Finance Comm., 222 S. C. 433, 73 S. E. (2d) 456 (1952).
The formation of a school district comprising parts of two counties or the consolidation of school districts lying in different counties must be approved by both county boards of education. Powers v. State Educational Finance Comm., 222 S. C. 433, 73 S. E. (2d) 456 (1952).

§ 21-114.1. Consolidation of school districts by county board of education.

The effect of this section is to enlarge the powers previously given to county boards of education by enabling them to consolidate school districts without a petition being filed or election held and without the consent of the legislative delegation. *Powers v. State Educational Finance Comm.*, 222 S. C. 433, 73 S. E. (2d) 456 (1952).

§ 21-114.2. Same; filing order of consolidation.

Quoted in *Powers v. State Educational Finance Comm.*, 222 S. C. 433, 73 S. E. (2d) 456 (1952).

ARTICLE 1.1.

The School District of Aiken County, Including Areas in Edgefield and Saluda Counties.

§ 21-119. Composition of district, etc.

Provisions of A. & J. R. 1953 (48) 342 make up this section.

ARTICLE 4.1.

Areas of Cherokee County in School Districts in Adjoining Counties.

§ 21-161. Authorization, regulation, etc.

Provisions of A. & J. R. 1953 (48) 115 make up this section.

ARTICLE 6.

Batesburg-Leesville District No. 3 of Lexington and Saluda Counties.

§ 21-200. Financial provisions, trustees, buildings, etc.

Provisions of A. & J. R. 1952 (47) 2019 make up this section.

ARTICLE 7.

District No. 5, Lexington and Richland Counties.

§ 21-201. Trustees, etc.

Provisions of A. & J. R. 1953 (48) 255 and of § 2 of A. & J. R. 1953 (48) 1209 make up this section.

Editor's note.—The two acts referred to appear to be in conflict inasmuch as the first provides for the appointment of the trustees of the district by the respective county boards of education while the latter provides for the appointment of representatives from Richland County in accordance with the provisions of law for the election of trustees of School District No. 5 of Lexington County.

CHAPTER 7.

SCHOOL TRUSTEES.

§ 21-230. General powers and duties of school trustees.

Lease of school athletic field.—School trustees had no power under subd. (5) of this section to lease or permit the use of a school athletic field for the playing of professional or semi-professional baseball during the school term. *Carter v. Lake City Baseball Club*, 218 S. C. 255, 62 S. E. (2d) 470 (1950).

§ 21-238. Trustees may sell school property.

Cited in *Nesbitt v. Gettys*, 219 S. C. 221, 64 S. E. (2d) 651 (1951).

CHAPTER 8.

STATE AID FOR SCHOOLS.

Article 1.

Teachers' Salaries and Overhead.

Sec.

21-260. Allowance for supervision and overhead.

21-262. [Repealed.]

Article 2.

For School Facilities.

21-272. Annual grant per pupil.

21-274. How such grants paid.

21-279. Applications for expenditure and accompanying statutuents.

21-283. Applications by county board when districts fail to make them.

21-289. Advances for capital improvements.

Article 3.

For General Purposes.

21-291. Annual appropriation of excess revenue.

Article 4.

Education For Physically or Educable Mentally Handicapped Children.

Sec.

21-293. Definitions.

21-293.1. Reimburse districts for special educational services for physically and educable mentally handicapped children.

21-293.2. Same; teacher basis allowance.

21-293.3. Supervision of special education program; expand devices of Department for such children.

21-293.4. Additional departmental personnel.

21-293.5. Teacher qualifications.

21-293.6. Determination of pupil eligibility.

21-293.7. Home instruction.

21-293.8. District operation of program; eligibility for state aid.

21-293.9. Surveys.

21-293.10. Rules, regulations and policies.

ARTICLE 1.

*Teachers' Salaries and Overhead.***§ 21-260. Allowance for supervision and overhead.**

In addition to the State aid for teachers' salaries, each school district or operating unit shall be allowed for supervision and overhead five dollars a school year for each pupil. Such allowance shall be based on enrollment. These funds shall be disbursed monthly along with the disbursement of funds for teachers' salaries.

1951 (47) 546; 1953 (48) 181.

Effect of amendment. — The payments were formerly based on average daily attendance rather than upon enrollment.

§ 21-262. Local appropriations prerequisite to State aid in counties with city of 70,000.

Repealed by A. & J. R. 1953 (48) 376.

ARTICLE 2.

*For School Facilities.***§ 21-272. Annual grant per pupil.**

The State shall make an annual contribution or grant of twenty dollars for each child, based on pupil enrollment during the school year next preceding the year in which the grant is made, as officially reported to the State Superintendent of Education. Such moneys shall be applied for the purpose of establishing and maintaining adequate physical facilities for the public school system or the payment of existing debts therefor, and for no other purpose.

1951 (47) 546; 1953 (48) 181.

Effect of amendment.—The amendment increased the grant from \$15.00 per child to \$20.00 and based it on enrollment rather than average daily attendance.

Stated in Powers v. State Educational Finance Comm., 222 S. C. 433, 73 S. E. (2d) 456 (1952).

§ 21-274. How such grants paid.

From the proceeds of the retail sales tax levied pursuant to chapter 15 of Title 65, such sum shall be annually allocated by the State Educational Finance Com-

mission to the school unit so entitled. If the public school on account of whose operation such grant is made shall constitute a part of a county unit system, the grant or contribution shall be credited to the county school district authorities. If the public school on account of whose operation the grant is made is operated as a part of a school district system, the grant shall be credited to the school district. If any change be made in the operation of such school, equitable reallocations shall be made by the Commission of all balances to the credit and all debits charged against the units affected by the change in the system of operation. The grants shall be computed annually as soon as practicable after the end of the school year and shall be based on enrollment in all of the public schools operated by each separate school district or operating unit of the State, as determined by the State Department of Education.

1951 (47) 546; 1953 (48) 181.

Effect of amendment. — The words "school district authorities" at the end of the second sentence are new and the grants are now based on enrollment rather than average daily attendance.

Funds paid pursuant to this section may not be used for paving sidewalks along highways approaching schools. Atty. Gen. Op., Feb. 10, 1954.

§ 21-278. County plans of improvements or tax relief.

Quoted in *Powers v. State Educational Finance Comm.*, 222 S. C. 433, 73 S. E. (2d) 456 (1952).

§ 21-279. Applications for expenditure and accompanying statements.

To expend such State school building grants accruing to the credit of any school district or operating unit with the State public school building fund, applications for such expenditure shall originate with the school district or operating unit, except as herein otherwise provided. To expend funds for capital improvements or the retirement of outstanding bonded indebtedness of the district or unit, the trustees of any school district or the governing body of any operating unit shall prepare a statement with their application which shall set forth the enrollment in the schools of the district or unit, showing the division as to schools, grades, number of teachers employed, facilities in use, facilities to be provided with funds to be expended and outstanding indebtedness.

1953 (48) 181.

Effect of amendment.—The amendment eliminated "and average daily attendance" after "enrollment" in last sentence.

§ 21-283. Applications by county board when districts fail to make them.

If any school district shall fail to make an approved application to the Commission for the present or future expenditure of funds for capital improvements or for the retirement of outstanding school district bonded indebtedness by July 1 1955 the county board of education wherein such district is located may, in the discretion of such county board, make such application, together with the proper statement, to the Commission for the expenditure of funds for capital improvements or retirement of outstanding bonded indebtedness within such district as, in the county board's judgment, will promote the best interests of the cause of education for the pupils within the school district or operating unit, but, in no event, shall the funds be expended for a purpose other than for the benefit of the pupils within the district or operating unit who have constituted the basis for the accrual of funds to the district's or operating unit's credit.

1951 (47) 546; 1953 (48) 386.

Effect of amendment.—The amendment extended the time for making application from July 1 1953 to July 1 1955.

§ 21-289. Advances for capital improvements.

But the Commission shall not advance or lend to any operating unit any sum in excess of seventy-five per cent of the estimated sum which will accrue to such

operating unit on account of grants to be made to such operating unit within the twenty years next following the date of the advance or on or before July 1 1976, whichever shall first occur. In estimating such grants, the Commission shall assume that the enrollment in the schools of the operating unit for the past preceding fiscal year will continue for the period during which the loan is to be repaid. 1953 (48) 181.

Effect of amendment. — “enrollment” substituted for “average daily attendance” in last sentence of second paragraph. The first paragraph was not changed and is effective.

Advances not violative of constitutional debt limitations.—The advances contem-

plated by this section, being payable from a “special fund” which will be created by the annual State grants, will not violate the constitutional debt limitations. State v. Byrnes, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

ARTICLE 3.

For General Purposes.

§ 21-291. Annual appropriation of excess revenue.

On or before September 30th of each year the State Budget and Control Board shall determine the amount by which the State's revenues, applicable thereto, exceeded the sum of (a) actual expenditures for normal maintenance and operation of the State Government during the next preceding fiscal year including expenditures to the political subdivision of the State based on established percentages of revenues but not including expenditures for highway purposes, (b) unexpended balances of continuing appropriations outstanding at the end of the preceding fiscal year and (c) whatever amount is found necessary to bring the General Fund Reserve to the prescribed maximum amount. All excess revenues so determined are hereby appropriated annually to the counties of the State, to be distributed to the respective counties in the proportion that the pupil enrollment of the public schools of a county bears to the total public school enrollment of the State, as determined by the State Superintendent of Education for the preceding school year. Such funds shall be used for general public school purposes, including the payment of school debt as directed by a majority of the respective legislative delegations, including the Senator.

1954 (48) 1566.

ARTICLE 4.

Education for Physically or Educable Mentally Handicapped Children.

§ 21-293. Definitions.

For the purpose of this article:

(1) “*Physically handicapped children*” means children of sound mind and of legal school age who suffer from any disability making it impracticable or impossible for them to benefit from or participate in the normal classroom program of the public schools;

(2) “*Educable mentally handicapped children*” means children of legal school age who, because of retarded mental growth, are incapable of being educated profitably and effectively through ordinary classroom instruction, but who may be expected to benefit from special education facilities designed to make them economically useful and socially adjusted;

(3) “*Special education program*” means education services carried on through special schools, special classes and special instruction.

1954 (48) 1479.

§ 21-293.1. Reimburse districts for special educational services for physically and educable mentally handicapped children.

The State Superintendent of Education shall reimburse school districts of the State for providing special educational services when in compliance with the provisions of this article and rules and regulations of the State Board of Educa-

tion from the regular appropriation for teachers' salaries in such manner as is provided by law.

1954 (48) 1479.

§ 21-293.2. Same; teacher basis allowance.

For special education services State aid shall be allowed for a teacher employed with a minimum enrollment of twelve pupils and a minimum attendance of ten; and the proportionate part of a teacher's salary will be allowed when such teacher has less than the required minimum enrollment and attendance.

1954 (48) 1479.

§ 21-293.3. Supervision of special education program; expand services of Department for such children.

The special education program shall be under the supervision of the State Superintendent of Education. The State Superintendent shall expand the services of the State Department of Education to include through the division of instruction a more extensive program of special education for physically and educable mentally handicapped children in the various school districts of the State.

1954 (48) 1479.

§ 21-293.4. Additional departmental personnel.

The State Superintendent may also employ on the staff of the Department additional personnel, if such be necessary of suitable professional qualifications who shall under his direction help develop and supervise the special education program authorized in this article. The State Superintendent may pay the salary of such additional personnel from the appropriation made to the Department for the hard of hearing and speech program.

1954 (48) 1479.

§ 21-293.5. Teacher qualifications.

No person shall be employed as a teacher in the special education program in the State unless such person holds a valid teacher's certificate issued by the Department and in addition possesses such special qualifications as the Board may require, or holds a comparable certificate in special education as may be developed by the Board.

1954 (48) 1479.

§ 21-293.6. Determination of pupil eligibility.

Local school authorities shall, with the assistance of the Department, determine by tests and special examination what pupils are eligible for special education services. No handicapped child shall be considered eligible for special education services except upon a certified diagnosis of a defect by competent and appropriate professional authorities acceptable to the State Superintendent.

1954 (48) 1479.

§ 21-293.7. Home instruction.

If in any district there are handicapped children not able even with the help of transportation to be assembled in a school, instruction may be provided in the child's home, or in hospitals or sanatoria. Children so instructed may be counted under the provisions of this article. The State Board of Education shall determine the number of hours of home instruction acceptable in lieu of regular school attendance.

1954 (48) 1479.

§ 21-293.8. District operation of program; eligibility for State aid.

A school district may operate a special education program for children eligible for such services under the provisions of this article and rules and regulations of the Board either as a district or jointly with other districts. When proper facilities

have been provided and when application has been made to and approved by the Department, the district will become eligible for State aid as provided in this article.
1954 (48) 1479.

§ 21-293.9. Surveys.

County superintendents of education, with the cooperation of school boards and other school officials in the various counties of the State and with the special assistance of the county attendance teachers, shall make an annual survey to determine the number of physically and mentally handicapped children in the respective counties and school districts and shall report results of such survey to the State Superintendent in such manner as he may require.
1954 (48) 1479.

§ 21-293.10. Rules, regulations and policies establish.

The Board shall establish rules, regulations and policies for:

- (1) Screening, classifying and determining, by use of standardization tests and such psychological and medical services as may be necessary, by qualified personnel, the eligibility of pupils to receive the benefits under the provisions of this article;
- (2) Determining certification requirements and special qualifications of teachers;
- (3) Outlining the manner and procedure by which applications for aid and plans for operation may be made and approved; and
- (4) Other matters not specified herein when necessary to carry out the provisions of this article.

1954 (48) 1479.

CHAPTER 9.
SCHOOL BUILDINGS.

Article 2.	Sec.
Use Abandoned School Buildings As Community Centers.	21-334. Reversion or reconveyance.
Sec.	Article 3.
21-330. Conveyance authorized; use.	Abandoned School Buildings in Oconee County.
21-331. Notice of meeting to elect trustees.	
21-332. Election and term of trustees; management of property.	21-340. Community property; use; sell or rent.
21-333. Repair, remodel or change buildings; maintenance.	

ARTICLE 2.
Use Abandoned School Buildings as Community Centers.

§ 21-330. Conveyance authorized; use.

The trustees of any consolidated school district may convey by deed any school building within the district which is no longer needed for school purposes. Any such abandoned school building shall be conveyed to the duly elected community trustees of the area constituting the former school district in which it is located, and their successors in office, in trust for the use and benefit of the community as a community building.
1954 (48) 1468.

Cross reference.—As to abandoned school buildings in Florence County, § 21-2655; Oconee County, § 21-340. Stated in Atty. Gen. Op., May 24, 1954.

§ 21-331. Notice of meeting to elect trustees.

Any community wishing to be provided for under the provisions of this article shall hold a meeting, after advertisement or notice in a newspaper of general circulation in the county in which the community is located once a week for two weeks immediately preceding the meeting to the qualified electors of the area con-

stituting the former school district, of the time and place of such meeting, for the purpose of electing three community trustees.

1954 (48) 1468.

Stated in Atty. Gen. Op., May 24, 1954.

§ 21-332. Election and term of trustees; management of property.

Upon election the community trustees and their successors shall hold, manage and direct the use of the premises as a community center for the use and benefit of the residents of the community or area. The terms of office of such trustees shall be for two years, and their successors shall be elected for a like term at a meeting held in the community after two weeks notice, in the manner provided in § 21-331, to the qualified electors of the community.

1954 (48) 1468.

Stated in Atty. Gen. Op., May 24, 1954.

§ 21-333. Repair, remodel or change buildings; maintenance.

Upon election the community trustees may remodel, repair, change the partition walls in any such building and make any other changes to the building that they may see fit. Such expense shall be borne by the community. Such trustees shall not be financially responsible for breakage or other injury to the premises, and they shall maintain any such buildings and premises in such repair as is reasonable under the circumstances. The building shall be insured against loss by fire.

1954 (48) 1468.

Stated in Atty. Gen. Op., May 24, 1954.

§ 21-334. Reversion or reconveyance.

Should at any time the premises cease to be used as a community center for the purpose herein stated, possession shall revert to the transferer. The trustees of the consolidated school district may insert in the deed an option to demand a reconveyance if such building should be again needed for school purposes.

1954 (48) 1468.

Stated in Atty. Gen. Op., May 24, 1954.

ARTICLE 3.

Abandoned School Buildings in Oconee County.

§ 21-340. Community property; use; sell or rent.

Provisions of A. & J. R. 1954 (48) 2421 make up this section.

Cross reference.—As to transfer of abandoned school buildings of consolidated districts, see §§ 21-330 et seq.

CHAPTER 12.

SUBJECTS OF INSTRUCTION.

§ 21-411. Subjects required to be taught.

Cross reference.—See § 32-886.2, director tional program for citizens above high of adult education for the prevention of school age. alcoholism to provide an alcoholic educa-

§ 21-412. Same; nature and effect of alcoholic drinks and narcotics.

Cross reference.—See § 32-886.2, director tional program for citizens above high of adult education for the prevention of school age. alcoholism to provide an alcoholic educa-

CHAPTER 12.

TEXTBOOKS.

Article 5.1.

Chesterfield County System.

Sec.

21-569. Books to be furnished free, etc.

Article 9.

District No. 2 of Sumter County.

Sec.

21-593. Rental system for District No. 2 of Sumter County.

ARTICLE 2.

State Rental System.

§ 21-479. Rules and regulations as to depositories, distribution and damage to books.

Cross reference.—For rules and regulations promulgated under authority of this

section, see Rules and Regulations, School Book Commission, in Volume 7.

ARTICLE 5.1.

Chesterfield County System.

§ 21-569. Books to be furnished free, etc.

Provisions of A. & J. R. 1953 (48) 490 make up this section.

ARTICLE 9.

District No. 2 of Sumter County.

§ 21-593. Rental system for District No. 2 of Sumter County.

Provisions of §§ 3, 4, 5 and 6, A. & J. R. 1952 (47) 2077, make up this section.

CHAPTER 14.

PUPILS.

Article 3.

Transportation of Pupils and School Busses Generally.

Sec.

21-801. Tampering with governors on schools busses.

21-813.1. School bus passing another school bus.

21-818. Highway Department to check operation of school busses; report.

Article 3.1.

Transportation by State or State Aid for Transportation.

21-838. County boards may make transportation contracts and receive State aid; special arrangements.

21-839. Bus drivers; selection, eligibility, training, etc.

Article 3.2.

Liability Insurance for School Busses.

21-840. Requirement of insurance for State-owned busses.

21-840.1. Same; for county and district-owned and contract busses.

Sec.

21-840.2. Benefits to be provided.

21-840.3. Certain benefits limited to actual damages.

21-840.4. Negligence irrelevant in certain cases; accidents covered.

21-840.5. Counties, etc., not to provide supplemental benefits on State-owned busses.

21-840.6. Source of funds for premiums on State-owned busses.

21-840.7. How and where actions brought; parties.

21-840.8. Waiver of claim against bus driver.

21-840.9. State's immunity not waived.

21-840.10. Rules and regulations.

Article 4.

Enrollment and Transfer of Pupils.

21-847. Transfer of pupils from one county to another.

21-848.1. Special provision for Richland County.

21-857.11. High schools students of Old Patrick School District in Chesterfield County attend.

ARTICLE 1.

*General Provisions.***§ 21-751. Mixed schools unlawful.**

Constitutionality. — The constitutional and statutory provisions requiring segregation in the public schools are not of themselves violative of the Fourteenth Amendment to the United States Constitution, but Negroes are denied rights guaranteed by that amendment where there is failure to furnish for Negroes educational facilities and opportunities equal to those furnished white persons. *Briggs v. Elliott*, 98 F. Supp. 529 (1951). See *Briggs v. Elliott*, 103 F. Supp. 920

(1952); *Briggs v. Elliott*, 342 U. S. 350, 72 S. Ct. 327, 96 L. Ed. 392 (1952).

Unconstitutional.—Segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive negro children of equal educational opportunities, in violation of the Fourteenth Amendment to the U. S. Constitution. *Brown v. Board of Education of Topeka*, ... U. S., 74 S. Ct. 686, ... L. Ed. (1954).

ARTICLE 3.

*Transportation of Pupils and School Busses Generally.***§ 21-801. Tampering with governors on school busses.**

It shall be unlawful for any person, other than authorized mechanics, to tamper with governors on school busses operated in this State. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined the sum of one hundred dollars or be imprisoned for a term of thirty days.

1953 (48) 198.

§ 21-813.1. School bus passing another school bus.

It shall be unlawful for any person operating a school bus to pass another school bus unless the lead bus is in a stopped position and the driver of the lead bus has signalled to the operator of the bus in the rear that it is safe to pass. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined the sum of one hundred dollars or be imprisoned for a term of thirty days.

1953 (48) 200.

§ 21-818. Highway Department to check operation of school busses; report.

The South Carolina State Highway Department shall have the operation of school busses spot checked periodically and shall report all infractions of the laws or misconduct of any kind on the part of the drivers to the chairman of the board of trustees of the school that may be affected thereby.

1953 (48) 201.

§ 21-820. Penalties.

Editor's note.—The word "article" in this section is not comprehensive enough to cover the entire article in view of the several enactments which compose the en-

tire article. Certainly consideration should be given to the excluding of §§ 21-795, 21-801, 21-813.1 and 21-818, and may be § 21-809, from the term "article".

ARTICLE 3.1.

*Transportation by State or State Aid for Transportation.***§ 21-833. Control by Commission.**

Stated in *Powers v. State Educational Finance Comm.*, 222 S. C. 433, 73 S. E. (2d) 456 (1952).

§ 21-838. County boards may make transportation contracts and receive State aid; special arrangements.

The Commission may enter into agreements with county boards of education whereby pupils living in isolated areas may be transported by special arrangements

when such transportation can be provided at lower cost than by operating a regular bus route.

1953 (48) 3.

Effect of amendment.—The amendment added the foregoing paragraph. As the section was otherwise unaffected only the new paragraph is set forth above.

§ 21-839. Bus drivers; selection, eligibility, training, etc.

The school bus drivers, whether students or adults, shall be selected and employed by the respective boards of trustees of the school districts, subject to the approval of the respective county boards of education. No person under sixteen years of age shall be eligible for consideration as a bus driver. Before being employed all prospective drivers shall be examined by the State Highway Department to determine their competency. The Highway Department shall provide a rigid school bus driver training course and issue special "School Bus Driver's Certificates" to successful candidates. No person shall be authorized to drive a school bus in this State transporting children, whether the bus be owned by the State, by a local school agency or by a private contractor, who has not been so certified by the Highway Department. Local school superintendents may supervise the conduct of pupils being transported and of school bus drivers.

1951 (47) 546; 1953 (48) 350.

Effect of amendment. — Formerly the first sentence provided that the county boards of education were responsible for the selection of drivers of State-owned busses, under such rules as the Commission might direct.

§ 21-839.7. Rules and regulations.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Educational Finance Commission, State, in Volume 7.

ARTICLE 3.2.

Liability Insurance for School Busses.

§ 21-840. Requirement of insurance for State-owned busses.

The Director of the Sinking Funds and Property Division of the State Budget and Control Board shall procure, by advertising for bids or by negotiation, one or more insurance contracts which shall give insurance coverage on all State-owned school busses which are operated under the authority of, and which are being used for the purposes of, Article 3.1 of this chapter.

1953 (48) 396.

§ 21-840.1. Same; for county and district-owned and contract busses.

County and district boards of education owning school busses shall provide the same insurance coverage for the lawful occupants of a county or district-owned bus as is provided for the lawful occupants of a State-owned school bus under § 21-840. County and district boards of education shall further see that this same insurance coverage is provided for all lawful occupants of any contract vehicle operated under contract with such county and district boards of education.

1953 (48) 396.

§ 21-840.2. Benefits to be provided.

The insurance contracts shall provide the following benefits:

(1) For a lawful occupant of any such school bus who suffers personal injuries or death, a death benefit of two thousand dollars and an amount sufficient to defray the cost of hospitalization, surgery, medicine and all other medical expenses up to three thousand dollars; and dismemberment and loss of sight benefits as follows:

- (a) For loss of both hands or both feet or sight of both eyes, two thousand dollars;
- (b) For loss of one hand and one foot, two thousand dollars;

(c) For loss of either hand or foot and sight of one eye, two thousand dollars; and

(d) For loss of either hand or foot or sight of one eye, one thousand dollars;

(2) For any person, other than a person riding in a school bus, or a person who qualifies for benefits under paragraph (1), who suffers personal injuries or death because of the negligent operation of any such school bus, an amount not exceeding five thousand dollars for any one person nor more than twenty-five thousand dollars for any one accident; and

(3) For any person, other than a person who qualifies for benefits under paragraph (1), whose property is damaged because of the negligent operation of any such school bus, an amount not exceeding five thousand dollars.

1953 (48) 396.

Cross reference.—See note to § 21-840.4.

For related case see *Reese v. National Surety Corp.*, 224 S. C. 489, 80 S. E. (2d) 47 (1954), which was brought under Act approved June 2, 1952, 48 Stat. 3. That Act expired by its own terms on July 1, 1953, and was replaced by this article (48 Stat. 396). There is nothing in this article which requires plaintiff to allege and prove lack of contributory negligence on his part. The Supreme Court in the above case stated that the action was tried below on the theory of the necessity of such allegation and proof. The Court did not pass upon the question, but added that while the Act of June 2, 1952, did require proof of lack of contributory negligence when a claim was made under section 3, (which appropriated State funds to pay claims arising prior to procurement of the insurance, but which is no longer effective), it was very doubtful whether this applied where an accident occurred after insurance had been procured on school buses.

The benefits of paragraph (1) of this section are extended by terms of § 21-840.4. *Collins v. National Surety Corp.*, _____ S. C. _____, 82 S. E. (2d) 511 (1954).

Persons covered.—Where complaint of pupil alleged injury suffered while engaged

in supervised play on school grounds by negligent backing over him of a school bus, and demanded judgment of \$5,000, demurrer properly sustained, as paragraphs (2) and (3) are "third person" provisions which accrue to benefit of any member of public, but exclude a person who is within protection of paragraph (1), such as plaintiff, consideration of all pertinent provisions of this article together convincing that it was not the legislative intent to provide insurance for one person under both paragraphs (1) and (2) of this section, and it further appearing that policy of insurance issued by defendant provided coverage under paragraph (2) of this section, under which plaintiff brought his action, but not under paragraph (1) thereof. *Collins v. National Surety Corp.*, _____ S. C. _____, 82 S. E. (2d) 511 (1954). (Editor's note.—This action was brought pursuant to Act approved June 2, 1952, 48 Stat. 3, which expired by its own terms on July 1, 1953, but was replaced by this article which comes from Act approved May 26, 1953, 48 Stat. 396. However, there are no material differences between the provisions of the two acts pertinent to the questions determined in this case.)

§ 21-840.3. Certain benefits limited to actual damages.

The benefits provided for in paragraphs (2) and (3) of § 21-840.2 shall be limited to actual damages.

1953 (48) 396.

§ 21-840.4. Negligence irrelevant in certain cases; accidents covered.

The benefits provided for in paragraph (1) of § 21-840.2 shall exist without regard to fault or negligence. The insurance shall cover any accident which occurs:

- (1) While getting on a school bus;
- (2) While riding within a school bus;
- (3) By being thrown from within a school bus;
- (4) While getting off a school bus;
- (5) By being run down, struck or run over by a school bus;
- (6) By being run down, struck or run over while crossing a public highway while approaching or leaving a school bus at the point of loading or unloading; or
- (7) By being run down, struck or run over by any moving vehicle while enroute between home and the point of loading or enroute between the point of unloading and home.

1953 (48) 396.

Cross reference.—See note to § 21-840.2. **Where there were separate insurers and separate policies** for the indemnities provided in paragraphs (1) and (2) of § 21-840.2, the insurer which issued the policy covering injuries to any person other than

a person riding in a school bus was not liable to one who was run over by a school bus while crossing the road to get on the bus. *Farmer v. National Surety Corp.* (S. C.), 74 S. E. (2d) 580 (1953).

§ 21-840.5. Counties, etc., not to provide supplemental benefits on State-owned busses.

No county or other political subdivision shall supplement the benefits provided in this article by the procuring of insurance or by any other means on State-owned school busses.

1953 (48) 396.

§ 21-840.6. Source of funds for premiums on State-owned busses.

The premiums on all insurance contracts procured under the authority of § 21-840 shall be paid out of the annual appropriation for transportation operated by the State Educational Finance Commission. Such premiums shall be considered a part of the general expenses of operating school bus transportation.

1953 (48) 396.

§ 21-840.7. How and where actions brought; parties.

Any action brought under the provisions of §§ 21-840 to 21-840.4 shall be brought directly against the insurance carrier and shall be brought in the county where the accident occurred. Neither the State nor any agency or political subdivision thereof shall be made a party to any such action.

1953 (48) 396.

§ 21-840.8. Waiver of claim against bus driver.

The acceptance of any payment or the bringing of any action authorized by this article shall constitute a waiver of any liability that might otherwise exist on the part of the driver of any State-owned school bus operated under the authority of Article 3.1 of this chapter.

1953 (48) 396.

§ 21-840.9. State's immunity not waived.

Nothing in this article shall be construed as a waiver of the State's general immunity from liability and suit.

1953 (48) 396.

§ 21-840.10. Rules and regulations.

The Director of the Sinking Funds and Property Division of the State Budget and Control Board may promulgate any rules or regulations or set up any procedure which will, in his judgment, clarify the provisions or facilitate the purposes of this article.

1953 (48) 396.

ARTICLE 4.

Enrollment and Transfer of Pupils.

§ 21-847. Transfer of pupils from one county to another.

If school children in one county reside closer to schools in an adjacent county they may attend such schools upon the school authorities of the county of their residence arranging with the school officials of the adjacent county for such admission and upon payment of appropriate charges as herein authorized. The board of trustees in the school district in which the pupils reside shall make written application through its county board of education to the board of trustees of the district in which the school is located for the admission of such children, giving full information as to ages, residence and school attainment, and the board of trustees in the school district, agreeing to accept such pupils, shall give a written statement of agreement. Upon receipt of such application the board of trustees of

the school and its county board of education shall determine the monthly per pupil cost of all overhead expenses of the school which will include all expenses of the school not paid by the State. Upon proper arrangement being made for the payment monthly of such overhead per pupil cost for each such child they shall be admitted to the schools of the adjacent county.

1953 (48) 348.

Effect of amendment.—The amendment section was otherwise unaffected only the added the foregoing paragraph. As the additional paragraph is set forth above.

§ 21-848.1. Special provision for Richland County.

Provisions of A. & J. R. 1953 (48) 391 make up this section.

§ 21-852. When payment of tuition, etc., may not be required.

Section is constitutional.—The exemption of certain counties from the operation of this section has not the effect of rendering the section unconstitutional as denying due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the federal Constitution and S. C. Const., Art. 1, § 5. *Moseley v. Welch*, 218 S. C. 242, 62 S. E. (2d) 313 (1950).

This section is not invalid as unlawfully discriminating against the children of parents who own property only in the district in which they reside. Nor is it invalid on the ground that it adds to the statute from which it was codified matter utterly inconsistent with the original subject matter thereof. *Moseley v. Welch*, 218 S. C. 242, 62 S. E. (2d) 313 (1950).

The word "adjoining" as used in this section should be given its commonly accepted meaning of being in contact with or of touching at some point. *Moseley v. Welch*, 218 S. C. 242, 62 S. E. (2d) 313 (1950).

Two school districts adjoin within the meaning of this section although the only place where the two districts touch is for a short distance in the swamp of a river

where the boundary line between the two districts is the center of the river, and at such point of contact they are separated not only by the stream of the river itself but also by an impenetrable river swamp four and a half miles wide. *Moseley v. Welch*, 218 S. C. 242, 62 S. E. (2d) 313 (1950).

The right given by this section is not dependent upon owning property of a certain value. *Moseley v. Welch*, 218 S. C. 242, 62 S. E. (2d) 313 (1950).

Or upon holding it for any specified period.—*Moseley v. Welch*, 218 S. C. 242, 62 S. E. (2d) 313 (1950).

Parents who acquired property in an adjoining school district for the sole purpose of enabling them to send their children to the schools in that district nevertheless had the right to avail themselves of the privilege given by this section, even though the property acquired was of comparatively small value upon which the yearly tax was only three or four dollars. *Moseley v. Welch*, 218 S. C. 242, 62 S. E. (2d) 313 (1950).

Transportation of children attending school in adjoining district.—See *Moseley v. Welch*, 218 S. C. 242, 62 S. E. (2d) 313 (1950).

§ 21-857.11. High schools students of Old Patrick School District in Chesterfield County may attend.

Provisions of A. & J. R. 1954 (48) 2033 make up this section.

CHAPTER 15.

FINANCIAL MATTERS.

Article 2.

School Taxes Generally.

Sec.

21-915. Same; petition in Laurens and Williamsburg Counties.

21-916. [Repealed.]

21-933. [Repealed.]

Article 4.

Claims against School Funds.

21-953.1. Same; in Laurens County School Districts Nos. 55 and 56.

Article 6.

State School Bonds.

Sec.

21-996. Limits on aggregates of such indebtedness.

21-999.5. Execution of bonds.

Article 9.

Bonds of Spartanburg County School District No. 2 in Cherokee and Spartanburg Counties.

21-1000.200. Authority to issue.

Sec.

21-1000.201. Maturity of bonds; interests; denominations.

21-1000.202. Execution of bonds.

21-1000.203. Validity; pledge of credit for payment of bonds.

21-1000.204. Levy taxes pay bonds.

21-1000.205. Exemption from taxes.

Sec.

21-1000.206. Payment of expenses.

Article 10.

Spartanburg County School Districts
Nos. 1 and 3 Bonds.

21-1000.210. Authority to issue, etc.

ARTICLE 2.

School Taxes Generally.

§ 21-915. **Same; petition in Laurens and Williamsburg Counties.**

In *Laurens* and *Williamsburg* Counties the elections provided for in § 21-914 shall be ordered by the county board of education upon the petition of the trustees of any school district in the counties.

1942 Code § 5330; 1932 Code § 5356; Civ. C. '22 § 2603; Civ. C. '12 § 1742; Civ. C. '02 § 1208; 1896 (22) 162; 1900 (23) 364; 1903 (24) 64; 1906 (25) 111; 1907 (25) 631; 1910 (26) 742; 1915 (29) 100; 1917 (30) 382; 1920 (31) 727, 1084; 1923 (33) 773; 1924 (33) 988; 1925 (34) 157; 1930 (36) 1126; 1934 (38) 1591; 1947 (45) 120, 201; 1952 (47) 1842.

Effect of amendment.—Formerly Newberry County was included in this section.

§ 21-916. **Maximum rate in Horry County.**

Repealed by A. & J. R. 1952 (47) 1905.

Cross reference.—See now § 21-3051.

§ 21-933. **Reductions in Greenville County.**

Repealed by A. & J. R. 1952 (47) 2088.

Cross reference.—See now § 21-2830.

ARTICLE 4.

Claims against School Funds.

§ 21-953.1. **Same; in Laurens County School Districts Nos. 55 and 56.**

Provisions from A. & J. R. 1953 (48) 259 make up this section.

ARTICLE 6.

State School Bonds.

§ 21-995. **Authority to issue.**

Article is constitutional.—The General Appropriation Act of 1951, from which this article was codified, is a valid enactment of the General Assembly; the retail sales and use tax therein imposed is a proper exercise of the taxing power

of the State; and the State school bonds which are authorized will, when issued, constitute obligations of the tenor and terms set forth in the act. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

§ 21-996. **Limits on aggregates of such indebtedness.**

The aggregate principal indebtedness on account of bonds issued to obtain funds to make advances to the school districts or operating units of the several counties, after deducting that part of any sinking fund applicable to the retirement of bonds issued for such purpose, shall never exceed one hundred million dollars. * * *

1951 (47) 546; 1954 (48) 1530.

Effect of amendment.—The amendment changed "seventy-five million dollars" in first paragraph to "one hundred million dol-

lars". Section other than above portion remains effective.

§ 21-998. **When bonds to be issued.**

Section does not violate constitutional provision for separation of powers.—S. C. Const., Art. 1, § 14, which specifies sep-

aration of the legislative, executive and judicial branches of the government, is not violated by the provisions of this section

whereby the Governor and State Treasurer are authorized to issue bonds on the basis of Commission estimates of the pro-

ceeds of the retail sales tax. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

§ 21-999.5. Execution of bonds.

All State school bonds issued under this article shall be signed by the Governor and the State Treasurer. In the instance of the Governor he may sign such obligations by a facsimile of his signature. The great seal of the State shall be affixed to, impressed or reproduced upon each of them and each shall be attested by the Secretary of State. The coupons attached to the State school bonds shall be authenticated by a facsimile signature of the State Treasurer who is in office on the date of such State school bonds. The delivery of the State school bonds so executed and authenticated shall be valid notwithstanding any changes in officers or seal occurring after such execution or authentication.

1951 (47) 546; 1953 (48) 197.

Effect of amendment.—The amendment added the provision that the Governor could sign by facsimile signature and also

the provision that the great seal of the State might be reproduced on the bonds.

§ 21-999.6. Pledge of credit and revenues for payment of bonds.

Failure to allocate surplus revenue does not render sales tax invalid.—State v.

Byrnes, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

§ 21-999.7. When pledge not to prevent decrease in sales tax.

Quoted in *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

ARTICLE 9.

Bonds of Spartanburg County School District No. 2 in Cherokee and Spartanburg Counties.

§ 21-1000.200. Authority to issue.

The trustees of Spartanburg County School District No. 2, composed of an area lying in *Spartanburg* and *Cherokee* Counties may sell coupon bonds of the school district to an amount such that the net bonded indebtedness at no time shall exceed eight percent of the last assessed valuation or the current assessed valuation of the school district as composed April 12 1954 for the purpose of building and equipping school buildings.

1953 (48) 165; 1954 (48) 1849.

Effect of amendment.—The amendment added area lying in Cherokee County and fixed time of composition of the district.

§ 21-1000.201. Maturity of bonds; interest; denominations.

Any bonds issued pursuant to this article shall mature not more than ten years from date thereof, shall bear interest from date at rate not exceeding four percent per annum, payable annually or semi-annually, as the trustees may elect, and shall be in such denominations as the trustees may elect.

1953 (48) 165.

§ 21-1000.202. Execution of bonds.

Such bonds shall be signed and executed by the trustees of such district but any coupons attached thereto may be lithographed or engraved with the facsimile signature of the members of the board of trustees.

1953 (48) 165.

§ 21-1000.203. Validity; pledge of credit for payment of bonds.

The bonds when executed shall constitute binding obligations of the district in *Spartanburg* County and that area of the district lying in *Cherokee* County, and the full faith, credit and taxing power of the district are hereby irrevocably pledged for the payment thereof.

1953 (48) 165; 1954 (48) 1849.

Effect of amendment.—The amendment added area in Cherokee County.

§ 21-1000.204. Levy taxes pay bonds.

There shall be levied and collected annually upon all the taxable property in the district, by officials of *Cherokee* and *Spartanburg* Counties charged with the levying and collection of taxes, a tax adequate and sufficient to meet the interest on any bonds issued hereunder and to pay the principal of same as they mature. The treasurer of *Cherokee* County shall deliver to the treasurer of *Spartanburg* County all monies collected under the levy provided for herein in *Cherokee* County, and the treasurer of *Spartanburg* County shall pay the interest and principal of the bonds and coupons as the same severally become due according to the terms thereof.

1953 (48) 165; 1954 (48) 1849.

Effect of amendment.—The amendment added Cherokee County and fixed duties of its treasurer.

§ 21-1000.205. Exemption from taxes.

Any bonds issued hereunder shall be nontaxable.

1953 (48) 165.

§ 21-1000.206. Payment of expenses.

The expense of issue and sale shall be paid out of the proceeds of the sale of the bonds.

1953 (48) 165.

ARTICLE 10.

*Spartanburg County School Districts Nos. 1 and 3 Bonds.***§ 21-1000.210. Authority to issue, etc.**

Provisions of A. & J. R. 1953 (48) 1255 and A. & J. R. 1954 (48) 2502 make up this article.

CHAPTER 16.

ABBEVILLE COUNTY.

Sec.

21-1001.1. Board of education.

21-1003. Administrative superintendent of the county school system.

Sec.

21-1011. Trustees of School District No. 60.

§ 21-1001.1. Board of education.

In *Abbeville* County the board of education shall be composed of eight members who shall be appointed by the Governor upon the recommendation of the Senator and at least one-half of the members of the House of Representatives from the county, who shall serve as provided in § 21-101.

1954 (48) 1433.

§ 21-1003. Administrative superintendent of the county school system.

Provisions of A. & J. R. 1953 (48) 114 make up this section.

§ 21-1011. Trustees of School District No. 60.

Provisions of A. & J. R. 1952 (47) 1702, as amended by A. & J. R. 1953 (48) 16, make up this section.

CHAPTER 17.

AIKEN COUNTY.

Article 1.

County Board of Education.

Sec.

- 21-1031. Composition.
 21-1032. Conduct and expense of election.
 21-1034. Officers; meetings; compensation.
 21-1035.1. County board to act as school trustees; power to borrow; area boards of education; attendance area budgets.

Article 4.

School Districts and School Trustees.

Sec.

- 21-1062 to 21-1067. [Repealed.]

Article 5.

Aiken School District No. 1.

- 21-1081 to 21-1085. [Repealed.]

ARTICLE 1.

County Board of Education.§ 21-1031. **Composition.**

Amended by A. & J. R. 1953 (48) 229.

§ 21-1032. **Conduct and expense of election.**

Amended by A. & J. R. 1953 (48) 229.

§ 21-1034. **Officers; meetings; compensation.**

Amended by A. & J. R. 1954 (48) 1758.

§ 21-1035.1. **County board to act as school trustees; power to borrow; area boards of education; attendance area budgets.**

Provisions from A. & J. R. 1952 (47) 2101 make up this section.

ARTICLE 3.

Disbursements, Budgets and Levies.§ 21-1053. **Special taxes to provide extra funds for school districts.**

Editor's note.—There is now only one school district in Aiken County.

§ 21-1054. **Credits to school districts.**

Editor's note.—There is now only one school district in Aiken County.

§ 21-1055. **Disbursements.**

Editor's note.—There is now only one school district in Aiken County. See § 21-1035.1 as to required approval by area boards of education.

ARTICLE 4.

School Districts and School Trustees.§ 21-1061. **Nine school districts.**

Editor's note. — All school districts in Aiken County have been consolidated into one.

§§ 21-1062 to 21-1067. **Tax on added territory for bonds; school district trustees.**

Repealed by A. & J. R. 1952 (47) 2101.

Cross reference.—See now § 21-1035.1.

§ 21-1068. **Special provisions for certain schools.**

Editor's note.—See § 21-1035.1 permitting the county board of education to establish area boards of education. If established they would appear to supersede the education committees established under § 21-1068. Also there is now only one school district in Aiken County.

§ 21-1069. Straightening lines of school districts.

Editor's note.—There is now only one school district in Aiken County.

ARTICLE 5.*Aiken School District No. 1.***§§ 21-1081 to 21-1085. Aiken School District No. 1.**

Repealed by A. & J. R. 1952 (47) 2101.

Cross reference.—See now § 21-1035.1.

§ 21-1086. Trustees may declare teacher or employee secondary.

Editor's note.—This section was applicable only to Aiken School District No. 1 and there is no longer any such district, all districts in Aiken County having been consolidated into the School District of Aiken County.

§ 21-1087. Secondary teachers or employees to remain such for life.

Editor's note.—This section was applicable only to Aiken School District No. 1 and there is no longer any such district, all districts in Aiken County having been consolidated into the School District of Aiken County.

§ 21-1088. Pay of secondary teacher or employee.

Editor's note.—This section was applicable only to Aiken School District No. 1 and there is no longer any such district, all districts in Aiken County having been consolidated into the School District of Aiken County.

CHAPTER 18.**ALLENDALE COUNTY.****Article 1.****General Provisions.****Sec.**

Sec.

21-1100. Election of trustees of the school district.

21-1101 to 21-1104. [Repealed.]

21-1105. [Repealed.]

21-1106. School district budgets and levy of taxes therefor.

ARTICLE 1.*General Provisions.***§ 21-1100. Election of trustees of the school district.**

Provisions of A. & J. R. 1953 (48) 293 make up this section.

§§ 21-1101 to 21-1104. Election of school district trustees; vacancies.

Repealed by A. & J. R. 1953 (48) 293.

Cross reference.—See now § 21-1100.

§ 21-1105. Levies for school purposes.

Repealed by A. & J. R. 1952 (47) 2092.

Cross reference.—See now § 21-1106.

§ 21-1106. School district budgets and levy of taxes therefor.

Provisions of A. & J. R. 1952 (47) 2092 make up this section.

Editor's note.—There is now only one school district in Allendale County. See § 21-1100.

§ 21-1107. Use of surplus in current operating account for bonds or interest.

Editor's note.—There is now only one school district in Allendale County.

§ 21-1108. Use of surplus for other purposes.

Editor's note.—There is now only one school district in Allendale County.

§ 21-1109. Investment of funds.

Editor's note.—There is now only one school district in Allendale County.

ARTICLE 2.

Borrowing from Federal Agencies.

§§ 21-1121 to 21-1127. **Borrowing by school districts from Federal agencies.**

Editor's note.—There is now only one school district in Aiken County.

CHAPTER 19.

ANDERSON COUNTY.

Article 1.

County Board and County Superintendent.

Sec.
21-1152. [Repealed.]

Article 2.

School Districts; Attendance; Tuition; Facilities.

21-1173. Special elections for consolidating districts.

Article 3.

Boards of Trustees.

Sec.
21-1191.1. Number and appointment or election of trustees.

Article 5.

Financial Matters Generally.

21-1227. Levy for libraries in School District No. 5.
21-1228. Disbursement of funds, School District No. 5.

ARTICLE 1.

County Board and County Superintendent.

§ 21-1152. **Board members serve without pay.**

Repealed by A. & J. R. 1952 (47) 1910.

ARTICLE 2.

School Districts; Attendance; Tuition; Facilities.

§ 21-1171. **High school districts.**

Editor's note.—There are now only five school districts in Anderson County.

§ 21-1172. **Board may renumber districts.**

Editor's note.—There are now only five school districts in Anderson County.

§ 21-1173. **Special elections for consolidating districts.**

Amended by A. & J. R. 1952 (47) 1915.

§ 21-1174. **Consolidation of school district with high school district.**

Editor's note.—There are now only five school districts in Anderson County and much of the material in §§ 21-1174 to 21-1183 would appear to have been superseded by the consolidation effected.

§ 21-1175. **Common school district ceases on being consolidated.**

Cross reference.—See note to § 21-1174.

§ 21-1176. **Pupils of certain districts to attend certain high schools.**

Cross reference.—See note to § 21-1174.

§ 21-1177. **Same; exception.**

Cross reference.—See note to § 21-1174.

§ 21-1178. **Tuition school districts to pay high school district for high school pupils.**

Cross reference.—See note to § 21-1174.

§ 21-1179. **Tuition high school pupil to pay to attend school of his choice.**

Cross reference.—See note to § 21-1174.

§ 21-1180. **Tuition elementary pupil to pay to attend school of his choice.**

Cross reference.—See note to § 21-1174.

§ 21-1183. School districts to file annual reports with board of education.

Cross reference.—See note to § 21-1174.

ARTICLE 3.

Boards of Trustees.

§ 21-1191.1. Number and appointment or election of trustees.

Provisions from A. & J. R. 1952 (47) 2088 make up this section.

§ 21-1192. Number of high school district trustees.

Editor's note. — There are only five and apparently no "high school districts" school districts in Anderson County now as such.

§ 21-1193. Election and term of high school trustees.

Editor's note. — There are only five and apparently no "high school districts" school districts in Anderson County now as such.

§ 21-1194. Common school district trustees; terms.

Editor's note. — There are only five and apparently no "common school districts" in Anderson County now as such.

§ 21-1195. Election of common school trustees.

Editor's note. — There are only five and apparently no "common school districts" in Anderson County now as such.

§ 21-1196. Qualifications of trustees.

Editor's note.—There are apparently no districts" in Anderson County now but "common school districts" or "high school only five "school districts."

§ 21-1197. Boards to elect chairman.

Editor's note.—There are apparently no districts" in Anderson County now but "common school districts" or "high school only five "school districts."

§ 21-1198. Vacancies in boards of trustees.

Editor's note.—There are apparently no districts" in Anderson County now but "common school districts" or "high school only five "school districts."

ARTICLE 4.

Elections.

§ 21-1215. Payment of election expenses.

Editor's note.—There are now only five districts" or "common school districts" as school districts in Anderson County and such. apparently none of them are "high school

ARTICLE 5.

Financial Matters Generally.

§ 21-1224. Levy in Anderson County for high school districts caring for independent district pupils.

Editor's note.—There are now only five districts" or "common school districts" as school districts in Anderson County and such. apparently none of them are "high school

§ 21-1226. Additional levy in Piedmont School District No. 23.

Editor's note.—This school district no son County having been consolidated into five districts numbered from 1 to 5.

§ 21-1227. Levy for libraries in School District No. 5.

Provisions of A. & J. R. 1953 (48) 480 make up this section.

Editor's note.—A. & J. R. 1953 (48) 480 such districts for the support of libraries. authorized a special election in School The levy failed to carry in School Districts Nos. 2 and 5 to determine District No. 2 but was carried in School District No. 5.

§ 21-1228. Disbursement of funds, School District No. 5.

Provisions of A. & J. R. 1953 (48) 481 make up this section.

ARTICLE 6.

*Sinking Fund Commissions for School Districts.***§ 21-1236. School District No. 17 exempted.**

Editor's note.—This school district no son County having been consolidated in longer exists, all school districts in Ander to five districts numbered from 1 to 5.

CHAPTER 21.

BARNWELL COUNTY.

Sec.

21-1352. Trustees of District No. 45 to be appointed.

§ 21-1352. Trustees of District No. 45 to be appointed.

Provisions from A. & J. R. 1952 (47) 1845 make up this section.

CHAPTER 22.

BEAUFORT COUNTY.

Sec.

21-1422.1. Allocation of State school building funds; county unit system.

§ 21-1422.1. Allocation of State school building funds; county unit system.

Provisions of A. & J. R. 1953 (48) 232 make up this section.

CHAPTER 23.

BERKELEY COUNTY.

Article 1.

General Provisions.

Sec.

21-1453. Administrative areas; trustees thereof; school budgets.

21-1454. [Repealed.]

21-1456. Contracts of teachers et al.

21-1459. [Repealed.]

21-1461, 21-1462. [Repealed.]

Article 2.

Election of School Trustees.

21-1471 to 21-1473. [Repealed.]

Article 3.

Trustees in Certain Districts.

21-1481 to 21-1484. [Repealed.]

Article 4.

Bonneau High School District.

Sec.

21-1491, 21-1492. [Repealed.]

Article 5.

Cross High School District.

21-1501 to 21-1503. [Repealed.]

Article 6.

Macedonia High School District.

21-1511, 21-1512. [Repealed.]

Article 7.

St. Stephens High School District.

21-1521 to 21-1524. [Repealed.]

Article 8.

School District No. 26.

21-1531. [Repealed.]

ARTICLE 1.

*General Provisions.***§ 21-1453. Administrative areas; trustees thereof; school budgets.**

Provisions from A. & J. R. 1952 (47) 2151, as amended by A. & J. R. 1953 (48) 288, make up this section.

§ 21-1454. Employment of teachers and other employees.

Repealed by A. & J. R. 1952 (47) 2151.

Cross reference.—See now § 21-1453.**§ 21-1456. Contracts of teachers et al.**

Amended by A. & J. R. 1952 (47) 2151.

§ 21-1459. Enrollment of school children.

Repealed by A. & J. R. 1952 (47) 2151.

Cross reference.—See now § 21-1453.**§§ 21-1461, 21-1462. School budgets and annual tax.**

Repealed by A. & J. R. 1952 (47) 2151.

Cross reference.—See now § 21-1453.

ARTICLE 2.

*Election of School Trustees.***§§ 21-1471 to 21-1473. Election; vacancy.**

Repealed by A. & J. R. 1952 (47) 2151.

Cross reference.—See now § 21-1453.

ARTICLE 3.

*Trustees in Certain Districts.***§§ 21-1481 to 21-1484. Appointment or election; term; vacancies.**

Repealed by A. & J. R. 1952 (47) 2151.

Cross reference.—See now § 21-1453.

ARTICLE 4.

*Bonneau High School District.***§§ 21-1491, 21-1492. Creation; trustees.**

Repealed by A. & J. R. 1952 (47) 2151.

Cross reference.—See now § 21-1453.

ARTICLE 5.

*Cross High School District.***§§ 21-1501 to 21-1503. Creation; privileges; trustees.**

Repealed by A. & J. R. 1952 (47) 2151.

Cross reference.—See now § 21-1453.

ARTICLE 6.

*Macedonia High School District.***§§ 21-1511, 21-1512. Creation; trustees.**

Repealed by A. & J. R. 1952 (47) 2151.

Cross reference.—See now § 21-1453.

ARTICLE 7.

*St. Stephens High School District.***§§ 21-1521 to 21-1524. Creation and trustees.**

Repealed by A. & J. R. 1952 (47) 2151.

Cross reference.—See now § 21-1453.

ARTICLE 8.

*School District No. 26.***§ 21-1531. Created; corporate powers; trustees.**

Repealed by A. & J. R. 1952 (47) 2151.

Cross reference.—See now § 21-1453.

CHAPTER 24.

CALHOUN COUNTY.

Sec.

21-1552. Trustees for School Districts Nos. 1 and 2.

Sec.

21-1553. [Repealed.]

§ 21-1552. Trustees for School Districts Nos. 1 and 2.

Provisions from A. & J. R. 1952 (47) 1997 as amended by A. & J. R. 1954 (48) 1843 make up this section.

§ 21-1553. Cameron-Lone Star Centralized High School District No. 2-H.

Repealed by A. & J. R. 1954 (48) 1843.

Cross reference.—See now § 21-1552.

CHAPTER 25.

CHARLESTON COUNTY.

Article 4.

School Trustees.

Sec.

21-1636.1. Trustees of St. Paul's School District No. 23, St. John's

School District No. 9, Moultrie School District No. 2 and St. James Santee School District No. 1.

ARTICLE 4.

*School Trustees.***§ 21-1636.1. Trustees of St. Paul's School District No. 23, St. John's School District No. 9, Moultrie School District No. 2 and St. James Santee School District No. 1.**

Provisions from A. & J. R. 1952 (47) 2085 make up this section.

CHAPTER 26.

CHEROKEE COUNTY.

ARTICLE 1.

*General Provisions.***§ 21-1703. Blacksburg Grammar School District No. 9.**

Editor's note.—There is no longer any such district, the district of that name having been consolidated with others.

ARTICLE 3.

*School District No. 10.***§§ 21-1721 to 21-1729. School District No. 10.**

Editor's note.—There is no longer any such school district, the former district so named having been consolidated with others.

ARTICLE 4.

*Gaffney High School District No. 11.***§§ 21-1741 to 21-1748. Gaffney High School District No. 11.**

Editor's note.—There is no longer any such school district, the former district so named having been consolidated with others.

Transfer of property to high school district was constitutional. — See *Nesbitt v. Gettys*, 219 S. C. 221, 64 S. E. (2d) 651 (1951).

ARTICLE 5.

*Blacksburg High School District.***§§ 21-1761 to 21-1763. Blacksburg High School District.**

Editor's note.—There is no longer any such school district, the former district so

named having been consolidated with others.

ARTICLE 6.

*Limestone School District No. 19.***§§ 21-1771 to 21-1774. Limestone School District No. 19.**

Editor's note.—There is no longer any such district, the former district so named having been consolidated with others.

CHAPTER 27.

CHESTER COUNTY.

§ 21-1801. School districts consolidated.

The purpose of the consolidation of the school districts of Chester County was to relieve the county, as such, of the indebtedness of its several former school districts and transfer such indebtedness to the School District of Chester County, so that a proposed issue of hospital bonds by the county would not cause it to exceed the constitutional debt limit. *Tindall v. Byars*, 217 S. C. 1, 59 S. E. (2d) 337 (1950).

Consolidation held constitutional.—The act [1950 (46) 1813] from which §§ 21-1801, 21-1802, 21-1804 and 21-1815 were codified, consolidating the several school districts of Chester County into the School District of Chester County, is a valid enactment. It was authorized by S. C. Const., Art. 11, § 5, and did not violate subdivisions IV and IX of S. C. Const., Art. 3, § 34. Nor did the act, in providing for the assumption by the consolidated school district of the indebtedness of the old school districts, formerly assumed by the county, impair the obligations of contracts. *Tindall v. Byars*, 217 S. C. 1, 59 S. E. (2d) 337 (1950).

Indebtedness of former school districts has been lawfully assumed by new district.—The indebtedness of the several school districts, formerly existing in Chester County, has been lawfully assumed by the School District of Chester County, and is to be paid by the new consolidated school district. *Tindall v. Byars*, 217 S. C. 1, 59 S. E. (2d) 337 (1950).

And is not to be included in calculating indebtedness of Chester County.—The School District of Chester County, not Chester County, is chargeable with the indebtedness incurred by the former separate districts, formerly assumed by Chester County, and the latter's indebtedness is to be calculated without inclusion of the school district debt. The county and the consolidated school district are separate and distinct corporate entities of coincidental and coextensive areas. They are separately subject to the constitutional debt limitation. *Tindall v. Byars*, 217 S. C. 1, 59 S. E. (2d) 337 (1950).

CHAPTER 28.

CHESTERFIELD COUNTY.

Article 1.

Board of Education Generally.

Sec.

21-1851. Election and term.

21-1852. Vacancy.

Article 2.

Financial Matters Generally.

21-1882.1. County board of education equalization tax.

Article 3.

School Districts Generally.

Sec.

21-1901. Annual meeting of electors.

21-1901.1. [Unconstitutional.]

21-1901.2. Trustees of consolidated districts.

21-1902. Removal.

ARTICLE 1.

Board of Education Generally.

§ 21-1851. **Election and term.**

Amended by A. & J. R. 1954 (48) 1564.

§ 21-1852. **Vacancy.**

Amended by A. & J. R. 1954 (48) 1564.

ARTICLE 2.

Financial Matters Generally.

§ 21-1882.1. **County board of education equalization tax.**

Provisions from A. & J. R. 1952 (47) 2110 make up this section.

ARTICLE 3.

School Districts Generally.

§ 21-1901. **Annual meeting of electors.**

The board of education of *Chesterfield* County shall before March 1st each year call a meeting of the electors of each school district in the county, which shall be duly advertised. At such meeting the electors attending shall organize as a mass meeting and consider their school needs.

1942 Code § 5558; 1936 (39) 1637; 1954 (48) 1532.

Effect of amendment.—The amendment last paragraph. Last paragraph eliminated eliminated all of section except above and due district mentioned being consolidated.

§ 21-1901.1. **Trustees of consolidated districts.**

Provisions from A. & J. R. 1952 (47) 2111 made up this section, however they were held unconstitutional and section thus is ineffective.

Cross reference.—See now § 21-1901.2 for election, etc. of school trustees.

Editor's note.—A & J. R. 1952 (47) 2111 was held unconstitutional in *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

Section is unconstitutional. — The act [1952 (47) 2111] constituting this section

grants an unconstitutional preference to women in the election of school trustees. The unconstitutional provisions are not separable from the remainder of the act, and the act is thus rendered void in its entirety. *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

§ 21-1901.2. **Trustees of consolidated districts.**

Provisions from A. & J. R. 1954 (48) 1532 make up this section.

§ 21-1902. **Removal.**

The county board may at any time remove a district trustee for cause.

1942 Code § 5558; 1936 (39) 1637; 1954 (48) 1532.

Effect of amendment.—The amendment last paragraph, which is omitted as the district mentioned consolidated.

ARTICLE 7.

Chesterfield School District No. 18.

§§ 21-1971 to 21-1978. Chesterfield School District No. 18.

Editor's note.—There is no longer any such district, the former district so named having been consolidated with others.

ARTICLE 8.

Jefferson Centralized High School District.

§§ 21-1991 to 21-1993. Jefferson Centralized High School District.

Editor's note.—There is no longer any such district, the former district so named having been consolidated with others.

ARTICLE 9.

McBee Centralized High School District No. 16.

§§ 21-2001 to 21-2008. McBee Centralized High School District No. 16.

Editor's note.—There is no longer any such district, the former district so named having been consolidated with others.

ARTICLE 10.

Pageland Centralized High School District.

§§ 21-2021 to 21-2025. Pageland Centralized High School District.

Editor's note.—There is no longer any such district, the former district so named having been consolidated with others.

CHAPTER 29.

CLARENDON COUNTY.

Article 1.

General Provisions.

Sec.
21-2059. Annual audit for each school district.

Article 3.

East Clarendon District No. 3.

21-2081. Election of trustees, etc.

Article 4.

School District No. 2.

Sec.

21-2091. Maximum tax levy for operation.

ARTICLE 1.

General Provisions.

§ 21-2059. Annual audit for each school district.

The county board of education shall appoint a qualified auditor annually for each of the school districts in *Clarendon County*, which audit shall be filed with the clerk of court. The cost of such audit shall be charged to each school district.

1954 (48) 2052.

ARTICLE 3.

East Clarendon District No. 3.

§ 21-2081. Election of trustees, etc.

Provisions of A. & J. R. 1953 (48) 76 make up this section.

ARTICLE 4.

School District No. 2.§ 21-2091. **Maximum tax levy for operation.**

The operating millage for School District No. 2 shall not exceed thirty-five mills. 1954 (48) 2049.

CHAPTER 30.

COLLETON COUNTY.

Sec.

21-2179.1. Election and term of office of school trustees; vacancies.

21-2184. [Repealed.]

21-2186.1. Disbursement of school funds.

Sec.

21-2187. [Repealed.]

21-2190. Funds from State building program and Federal assistance.

§ 21-2179.1. **Election and term of office of school trustees; vacancies.**

Provisions from A. & J. R. 1952 (47) 2037 make up this section.

§ 21-2184. **Taxes for school expenses; building fund.**

Repealed by A. & J. R. 1954 (48) 2062.

§ 21-2186.1. **Disbursement of school funds.**

Provisions of A. & J. R. 1952 (47) 2039 make up this section.

§ 21-2187. **Warrants.**

Repealed by A. & J. R. 1952 (47) 2039.

Cross reference.—See now § 21-2186.1.

§ 21-2190. **Funds from State building program and Federal assistance.**

Provisions of A. & J. R. 1953 (48) 152 make up this section.

CHAPTER 31.

DARLINGTON COUNTY.

Article 1.

Board of Education.

Sec.

21-2254.1. School tax levy.

Article 5.

Aid for Weak Schools.

Sec.

21-2301, 21-2302. [Repealed.]

ARTICLE 1.

Board of Education.§ 21-2254.1. **School tax levy.**

Provisions of § 1, A. & J. R. 1952 (47) 2024 make up this section.

ARTICLE 5.

Aid for Weak Schools.§§ 21-2301, 21-2302. **Aid for weak schools.**

Repealed by A. & J. R. 1952 (47) 2024.

Cross reference.—See now § 21-2254.1.

CHAPTER 32.

DILLON COUNTY.

Article 1.

County Superintendent, County Board and School Trustees.

Sec.
21-2354. County board; appointment, term, powers, etc.

Article 3.

School Expenditures.

21-2385. Approval and form of claim.
21-2385.1. Processing, payment and rejection of claims.

Article 3.1.

Centralized School Districts.

Sec.
21-2400. Centralized school districts.

Article 4.

High School Districts.

21-2401 to 21-2411. [Repealed.]

Article 6.

Lake View Centralized High School District and Hillsboro No. 23.

21-2431 to 21-2436. [Repealed.]

ARTICLE 1.

*County Superintendent, County Board and School Trustees.***§ 21-2354. County board; appointment, term, powers, etc.**

Provisions of A. & J. R. 1953 (48) 1 make up this section.

ARTICLE 3.

*School Expenditures.***§ 21-2385. Approval and form of claim.**

Amended by A. & J. R. 1954 (48) 1820.

§ 21-2385.1. Processing, payment and rejection of claims.

Provisions of § 2 of A. & J. R. 1954 (48) 1820 make up this section.

ARTICLE 3.1.

*Centralized School Districts.***§ 21-2400. Centralized school districts.**

Provisions from A. & J. R. 1952 (47) 1719 make up this section.

ARTICLE 4.

*High School Districts.***§§ 21-2401 to 21-2411. High school districts.**

Repealed by A. & J. R. 1952 (47) 1719.

Cross reference.—See now § 21-2400.

ARTICLE 6.

*Lake View Centralized High School District and Hillsboro No. 23.***§§ 21-2431 to 21-2436. Lake View Centralized High School District and Hillsboro No. 23.**

Repealed by A. & J. R. 1952 (47) 1719.

Cross reference.—See now § 21-2400.

CHAPTER 33.

DORCHESTER COUNTY.

Article 2.

Taxes in Certain Districts.

Sec.

21-2539. Levy in St. George School District No. 1.

Sec.

21-2540. Levy in Summerville School District No. 2.

21-2541. Levy in Harleyville-Ridgeville School District No. 3.

ARTICLE 2.

Taxes in Certain Districts.

§§ 21-2531 to 21-2538. Levies in certain named districts.

Editor's note.—It would appear that all a total of three districts for the county of these sections have been repealed by the and by the enactment of §§ 21-2539 to 21-consolidation of the various districts into 2541.

§ 21-2539. Levy in St. George School District No. 1.

Provisions of A. & J. R. 1953 (48) 234 make up this section.

§ 21-2540. Levy in Summerville School District No. 2.

Provisions of A. & J. R. 1953 (48) 235 make up this section.

§ 21-2541. Levy in Harleyville-Ridgeville School District No. 3.

Provisions of A. & J. R. 1953 (48) 234 make up this section.

CHAPTER 34.

EDGEFIELD COUNTY.

§ 21-2552. Tax for Bacon School District.

Editor's note.—There is no longer any such district, all districts in the county having been consolidated into one.

§ 21-2553. Trustees of Central School District.

Editor's note.—There is no longer any such district, all districts in the county having been consolidated into one.

§ 21-2554. Edgefield School District.

Editor's note.—There is no longer any such district, all districts in the county having been consolidated into one.

§ 21-2555. Johnston School District.

Editor's note.—There is no longer any such district, all districts in the county having been consolidated into one.

CHAPTER 35.

FAIRFIELD COUNTY.

Sec.

21-2571. The School District of Fairfield County.

Sec.

21-2578 to 21-2619. [Repealed.]

§ 21-2571. The School District of Fairfield County.

Provisions of A. & J. R. 1952 (47) 2008, as amended by A. & J. R. 1953 (48) 63, make up this section.

§§ 21-2578 to 21-2619. County board of education, budget, purchases, county superintendent, tax levies, bonds, etc.

Repealed by A. & J. R. 1952 (47) 2008.

Cross reference.—See now § 21-2571.

CHAPTER 36.

FLORENCE COUNTY.

Sec.	Sec.
21-2651. [Repealed.]	ets and fix levies; election of trustees.
21-2652. County board of education.	21-2653.2. Trustees prepare budgets annually; approval.
21-2653. Number and terms of school district trustees.	21-2655. Abandoned school buildings.
21-2653.1. Annual meetings of citizens to pass on school district budg-	21-2657. [Repealed.]

§ 21-2651. County board of education.

Repealed by A. & J. R. 1952 (47) 1710.

Cross reference.—See now § 21-2652.

§ 21-2652. County board of education.

Provisions from A. & J. R. 1952 (47) 1710 make up this section.

§ 21-2653. Number and terms of school district trustees.

Provisions from A. & J. R. 1952 (47) 1707 and A. & J. R. 1954 (48) 1804 make up this section.

§ 21-2653.1. Annual meetings of citizens to pass on school district budgets and fix levies; election of trustees.

Provisions of A. & J. R. 1952 (47) 2001 make up this section.

§ 21-2653.2. Trustees prepare budgets annually; approval.

Provisions of § 3 of A. & J. R. 1954 (48) 2127 make up this section.

§ 21-2655. Abandoned school buildings.

Provision of A. & J. R. 1953 (48) 261 make up this section.

Cross reference.—As to abandoned school buildings of consolidated districts, see §§ 21-330 et seq.

§ 21-2657. Levy and collection of school district taxes.

Repealed by A. & J. R. 1952 (47) 2001.

Cross reference.—See now § 21-2653.1.

CHAPTER 37.

GEORGETOWN COUNTY.

ARTICLE 4.

*Financial Matters.***§ 21-2774. Funds received from game warden.**

Editor's note.—The position of "county game warden" was abolished by A. & J. R. 1952 (47) 2890.

CHAPTER 38.

GREENVILLE COUNTY.

Sec.	Sec.
21-2802. Trustees of Greenville County School District No. 520; election; duties and powers; county superintendent becomes administrator of school district.	budget; transfer of surplus bond funds.
21-2803. to 21-2805. [Repealed.]	21-2831 to 21-2832.1. [Repealed.]
21-2830. Annual levy for schools; increase or decrease thereof; bond levy;	21-2833. [Repealed.]
	21-2838. Payment of claims against The School District of Greenville County No. 520.

§ 21-2802. Trustees of Greenville County School District No. 520; election; duties and powers; county superintendent becomes administrator of school district.

Provisions from A. & J. R. 1952 (47) 2103, as amended by A. & J. R. 1953 (48) 409, make up this section.

§§ 21-2803 to 21-2805. County board of education.

Repealed by A. & J. R. 1953 (48) 409.

Cross reference.—See now § 21-2802.

§ 21-2830. Annual levy for schools; increase or decrease thereof; bond levy; budget; transfer of surplus bond funds.

Provisions of A. & J. R. 1952 (47) 2088 make up this section.

§§ 21-2831 to 21-2832.1. Budgets and levies.

Repealed by A. & J. R. 1952 (47) 2088.

Cross reference.—See now § 21-2830.

§ 21-2833. County board fund.

Repealed by A. & J. R. 1953 (48) 409.

Cross reference.—See now § 21-2802.

§ 21-2834. Fees from marriage licenses.

Editor's note.—The duties of the county board of education have been devolved upon the trustees of Greenville County School District No. 520 by A. & J. R. 1953 (48) 409.

§ 21-2835. School district may borrow.

Editor's note.—The duties of the county board of education have been devolved upon the trustees of Greenville County School District No. 520 by A. & J. R. 1953 (48) 409.

§ 21-2837. Warrants.

Editor's note.—The duties of the county board of education have been devolved upon the trustees of Greenville County School District No. 520 by A. & J. R. 1953 (48) 409.

§ 21-2838. Payment of claims against The School District of Greenville County No. 520.

Provisions of A. & J. R. 1952 (47) 1883 and A. & J. R. 1954 (48) 2145 make up this section.

CHAPTER 39.

GREENWOOD COUNTY.

Article 1.
School Trustees.

Sec.
21-2900. Trustees for consolidated school district; number, term, election, vacancy and qualifications.
21-2901. [Repealed.]

Article 2.
School District No. 13.

Sec.
21-2911 to 21-2914. [Repealed.]

Article 3.
School District No. 18.

21-2921 to 21-2925. [Repealed.]

ARTICLE 1.

School Trustees.

§ 21-2900. Trustees for consolidated school district; number, term, election, vacancy and qualifications.

Provisions from A. & J. R. 1952 (47) 2145, as amended by A. & J. R. 1953 (48) 363, make up this section.

§ 21-2901. Election of trustees.

Repealed by consolidation of districts and A. & J. R. 1952 (47) 2145.

Cross reference.—See now § 21-2900.

ARTICLE 2.

*School District No. 13.***§§ 21-2911 to 21-2914. School District No. 13.**

Repealed by consolidation of districts and A. & J. R. 1952 (47) 2145.

Cross reference.—See now § 21-2900.

ARTICLE 3.

*School District No. 18.***§§ 21-2921 to 21-2925. School District No. 18.**

Repealed by consolidation of districts and A. & J. R. 1952 (47) 2145.

Cross reference.—See now § 21-2900.

CHAPTER 40.

HAMPTON COUNTY.

Article 3.

Budgets, Notes and Warrants.

Sec.

21-2975. Levy to meet budget.

21-2983. County board budget.

ARTICLE 3.

*Budgets, Notes and Warrants.***§ 21-2975. Levy to meet budget.**

Amended by A. & J. R. 1953 (48) 270.

§ 21-2983. County board budget.

Provisions of A. & J. R. 1953 (48) 296 make up this section.

CHAPTER 41.

HORRY COUNTY.

Sec.

21-3051. County unit system; county board; term, appointment and duties; county superintendent; advisory boards of trustees; budgets and

Sec.

taxes; expenditures and surplus funds; county unit for financing. 21-3053 to 21-3082. [Repealed.]

§ 21-3051. County unit system; county board; term, appointment and duties; county superintendent; advisory boards of trustees; budgets and taxes; expenditures and surplus funds; county unit for financing.

Provisions from A. & J. R. 1952 (47) 1905, as amended by A. & J. R. 1953 (48) 329, make up this section.

§§ 21-3053 to 21-3082. Use of surplus funds; school trustees; high school superintendents and districts; Hickory Hill School District No. 38.

Repealed by A. & J. R. 1952 (47) 1905.

Cross reference.—See now § 21-3051.

CHAPTER 42.

JASPER COUNTY.

- | | |
|---|--|
| Sec. | Sec. |
| 21-3101. Consolidated school district; trustees thereof; approval of contracts. | 21-3103, 21-3104. [Repealed.] |
| 21-3102. Term of county superintendent. | 21-3105. Salaries of teachers and officials. |
| | 21-3107 to 21-3111. [Repealed.] |
| | 21-3112. Contracts in excess of budget void. |

§ 21-3101. Consolidated school district; trustees thereof; approval of contracts.

Provisions from A. & J. R. 1952 (47) 2081 make up this section.

§ 21-3102. Term of county superintendent.

Amend by A. & J. R. 1954 (48) 1451.

§§ 21-3103, 21-3104. School districts and trustees thereof.

Repealed by A. & J. R. 1952 (47) 2081.

Cross reference.—See now § 21-3101.

§ 21-3105. Salaries of teachers and officials.

Repealed by A. & J. R. 1954 (48) 1439.

§§ 21-3107 to 21-3111. Finances of school districts.

Repealed by A. & J. R. 1952 (47) 2081.

Cross reference.—See now § 21-3101.

§ 21-3112. Contracts in excess of budget void.

Provisions of A. & J. R. 1952 (47) 2121 make up this section.

CHAPTER 43.

KERSHAW COUNTY.

- | | |
|---|---------------------------------|
| Sec. | Sec. |
| 21-3150. The School District of Kershaw County. | 21-3172 to 21-3175. [Repealed.] |
| 21-3151 to 21-3168. [Repealed.] | 21-3177. [Repealed.] |

§ 21-3150. The School District of Kershaw County.

Provisions from A. & J. R. 1952 (47) 1919 make up this section.

§§ 21-3151 to 21-3168. County board and superintendent; school districts; trustees, etc.

Repealed by A. & J. R. 1952 (47) 1919.

Cross reference.—See now § 21-3150.

§§ 21-3169 to 21-3171. Payment of teachers' salaries; expenditures, limited to budget.

Editor's note.—These sections refer to "school districts" or "high school districts." Under A. & J. R. 1952 (47) 1919 there is now only one district in the county and these sections would appear to be amended accordingly. See § 21-3150.

§§ 21-3172 to 21-3175. District finances.

Repealed by A. & J. R. 1952 (47) 1919.

Cross reference.—See now § 21-3150.

§ 21-3176. Treasurer to report on bonds, etc.

Editor's note. — This section refers to "school districts." Under A. & J. R. 1952 (47) 1919 there is now only one district in the county and this section would appear to be amended accordingly.

§ 21-3177. Borrowing by boards.

Repealed by A. & J. R. 1952 (47) 1919.

Cross reference.—See now § 21-3150.

CHAPTER 44.
LANCASTER COUNTY.

Article 1.
General Provisions.

Sec.
21-3200. The School District of Lancaster
County.
21-3201 to 21-3203. [Repealed.]

Article 2.
County Superintendent and Supervisor of
School.

21-3211, 21-3212. [Repealed.]

Article 3.
County Board of Education.

21-3221 to 21-3227. [Repealed.]

Article 4.
School Trustees.

21-3241 to 21-3243. [Repealed.]

Article 5.
Financial Matters.

Sec.
21-3251 to 21-3267. [Repealed.]

Article 6.
Buford, Flat Creek and Indian Land High
School Districts.

21-3281 to 21-3284. [Repealed.]

Article 7.
Consolidated School District No. 30.

21-3291 to 21-3293. [Repealed.]

ARTICLE 1.

General Provisions.

§ 21-3200. The School District of Lancaster County.

Provisions from A. & J. R. 1952 (47) 2014, as amended by A. & J. R. 1953 (48) 107, make up this section.

§§ 21-3201 to 21-3203. Supplemental salaries; supervision of grammar schools; sweet potato curing houses.

Repealed by A. & J. R. 1952 (47) 2014.

Cross reference.—See now § 21-3200.

ARTICLE 2.

County Superintendent and Supervisor of Schools.

§§ 21-3211, 21-3212. County superintendent and supervisor of schools.

Repealed by A. & J. R. 1952 (47) 2014.

Cross reference.—See now § 21-3200.

ARTICLE 3.

County Board of Education.

§§ 21-3221 to 21-3227. County board of education.

Repealed by A. & J. R. 1952 (47) 2014.

Cross reference.—See now § 21-3200.

ARTICLE 4.

School Trustees.

§§ 21-3241 to 21-3243. School trustees.

Repealed by A. & J. R. 1952 (47) 2014.

Cross reference.—See now § 21-3200.

ARTICLE 5.

Financial Matters.

§§ 21-3251 to 21-3267. Financial matters.

Repealed by A. & J. R. 1952 (47) 2014.

Cross reference.—See now § 21-3200.

ARTICLE 6.

*Buford, Flat Creek and Indian Land High School Districts.***§§ 21-3281 to 21-3284. Buford, Flat Creek and Indian Land High School Districts.**

Repealed by A. & J. R. 1952 (47) 2014.

Cross reference.—See now § 21-3200.

ARTICLE 7.

*Consolidated School District No. 30.***§§ 21-3291 to 21-3293. Consolidated School District No. 30.**

Repealed by A. & J. R. 1952 (47) 2014.

Cross reference.—See now § 21-3200.

CHAPTER 46.

LEE COUNTY.

Article 1.

General Provisions.

Sec.

21-3350. County unit system; county board; county superintendent; advisory boards; administrative areas; finances.

21-3351 to 21-3355. [Repealed.]

Article 2.

Central Consolidated High School District.

Sec.

21-3361 to 21-3364. [Repealed.]

ARTICLE 1.

*General Provisions.***§ 21-3350. County unit system; county board; county superintendent; advisory boards; administrative areas; finances.**

Provisions of A. & J. R. 1952 (47) 2081 make up this section.

§ 21-3351 to 21-3355. County board and school trustees.

Repealed by A. & J. R. 1952 (47) 2081.

Cross reference.—See now § 21-3350.

§ 21-3356. Investment in defense bonds of district sinking funds.

Editor's note.—There are no longer any school districts in Lee County.

ARTICLE 2.

*Central Consolidated High School District.***§§ 21-3361 to 21-3364. Central Consolidated High School District.**

Repealed by A. & J. R. 1952 (47) 2081.

Cross reference.—See now § 21-3350.

CHAPTER 47.

LEXINGTON COUNTY.

Article 1.

County Board and Superintendent.

Sec.

21-3401, 21-3402. [Repealed.]

21-3403. County board of education; appointment and terms.

Article 2.

School Districts.

Sec.

21-3411.1. School trustees; appointment or election; terms.

21-3412. [Repealed.]

21-3414 to 21-3417. [Repealed.]

21-3423. Tax levy for operations.

ARTICLE 1.

*County Board and Superintendent.***§§ 21-3401, 21-3402. County board of education.**

Repealed by A. & J. R. 1952 (47) 1917.

Cross reference.—See now § 21-3403.

§ 21-3403. County board of education; appointment and terms.

Provisions from A. & J. R. 1952 (47) 1917 make up this section.

ARTICLE 2.

*School Districts.***§ 21-3411. School districts established.**

Editor's note.—The nine districts established by this section have been consolidated into five.

Division of county into new school districts held valid.—The act [1949 (46) 300] from which §§ 21-3411, 21-3412 and 21-3414 to 21-3418 were codified, and which authorized the Lexington County board of education, upon approval of the qualified electors at a special election to be held in the county, to divide the county into

new school districts, is valid and constitutional. The act was authorized by S. C. Const., Art. 11, § 5, and does not violate subdivisions IV and IX of S. C. Const., Art. 3, § 34, nor is it an unconstitutional delegation of legislative power to the county board of education. The election held pursuant to the act was likewise valid. *Smith v. Lexington School Dist. No. 1*, 219 S. C. 191, 64 S. E. (2d) 534 (1951).

§ 21-3411.1. School trustees; appointment or election; terms.

Provisions from A. & J. R. 1952 (47) 1916, as amended by A. & J. R. 1953 (48) 255, make up this section.

§ 21-3412. Trustees.

Repealed by A. & J. R. 1952 (47) 1916.

Cross reference.—See now § 21-3411.1.

§ 21-3413. Same; special provisions for Irmo District No. 8.

Editor's note.—This district no longer exists, having been consolidated with others.

§§ 21-3414 to 21-3417. Elections and qualifications of trustees; vacancies.

Repealed by A. & J. R. 1952 (47) 1916.

Cross reference.—See now § 21-3411.1.

§ 21-3422. Tax levies.

Cross reference.—See now § 21-3423.

Editor's note.—The second sentence was superseded by A. & J. R. 1952 (47) 1918, relating to tax levies for operation.

Section is constitutional. *Smith v. Lexington School Dist. No. 1*, 219 S. C. 191, 64 S. E. (2d) 534 (1951).

§ 21-3423. Tax levy for operations.

Provisions from A. & J. R. 1952 (47) 1918 make up this section.

CHAPTER 48.

MARION COUNTY.

Article 1.

County Board of Education.

Sec.

21-3451. Appointment; term; vacancy.

Article 2.

School District Trustees.

Sec.

21-3461. Appointment; term; etc.

ARTICLE 1.

*County Board of Education.***§ 21-3451. Appointment; term; vacancy.**

Amended by A. & J. R. 1954 (48) 1842.

ARTICLE 2.

School District Trustees.

§ 21-3461. **Appointment; term; etc.**

Provisions of A. & J. R. 1953 (48) 324 make up this section.

CHAPTER 49.

MARLBORO COUNTY.

Sec.
21-3504. Compensation of members.

Sec.
21-3508. Employment of county superintendent of education.

§ 21-3504. **Compensation of members.**

Amended by A. & J. R. 1953 (48) 240.

§ 21-3508. **Employment of county superintendent of education.**

Amended by A. & J. R. 1953 (48) 240.

CHAPTER 51.

NEWBERRY COUNTY.

Article 1.
General Provisions.

Sec.	21-3591. County board; duties of county	Sec.	21-3599, 21-3600. [Repealed.]
			superintendent; school trustees if only one district; taxes.

ARTICLE 1.

General Provisions.

§ 21-3591. **County board; duties of county superintendent; school trustees if only one district; taxes.**

Provisions of A. & J. R. 1952 (47) 1842 make up this section.

§§ 21-3599, 21-3600. **Composition and term of county board; employees ineligible.**

Repealed by A. & J. R. 1952 (47) 1842.

Cross reference.—See now § 21-3591.

ARTICLE 3.

School District No. 1.

§ 21-3622. **Transfer of surplus from bond account.**

Editor's note.—There is no longer any such school district as School District No. 1, the former district of that name having been consolidated with others.

CHAPTER 52.

OCONEE COUNTY.

Sec.
21-3661. The school district of Oconee County.
21-3662. [Repealed.]
21-3670. Levy to pay school district indebtedness; no further local levies.

Sec.
21-3672. [Superseded.]
21-3678. [Repealed.]
21-3679, 21-3680. [Repealed.]
21-3682. [Repealed.]

§ 21-3661. **The school district of Oconee County.**

Provisions of A. & J. R. 1953 (48) 412 make up this section.

§ 21-3662. Round Mountain High School.

Repealed by A. & J. R. 1952 (47) 2120.

§ 21-3670. Levy to pay school district indebtedness; no further local levies.

Provisions of A. & J. R. 1952 (47) 1981 make up this section.

§ 21-3672. Borrowing by the school district.

Superseded by A. & J. R. 1953 (48) 412.

Cross reference.—See now § 21-3661.

§ 21-3678. Annual tax levy for high school facilities.

Repealed by A. & J. R. 1952 (47) 1981 and A. & J. R. 1953 (48) 355.

Cross reference.—See now § 21-3670.

§§ 21-3679, 21-3680. Apportionment of receipts, expenditure.

Repealed by A. & J. R. 1952 (47) 1981.

Cross reference.—See now § 21-3670.

§ 21-3682. Portion of receipts allocated to Clemson-Calhoun High School.

Repealed by A. & J. R. 1952 (47) 1981.

Cross reference.—See now § 21-3670.

CHAPTER 53.

ORANGEBURG COUNTY.

Sec.

21-3707. [Repealed.]

21-3707.1. School districts corporations;
powers.

21-3711.1. Districts 1, 2, 4 and 6 subdi-

Sec.

vided into trustee voting areas;
may vote on area or district
basis.

21-3712.1. Vacancies.

§ 21-3707. School districts corporations; powers.

Repealed by A. & J. R. 1953 (48) 219.

Cross reference.—See now § 21-3707.1.

§ 21-3707.1. School districts corporations; powers.

Provisions of § 2 of A. & J. R. 1953 (48) 219 make up this section.

§ 21-3711. When trustees to be elected.

Editor's note.—"April in" should follow
"Tuesday in" in line four.

§ 21-3711.1. Districts 1, 2, 4 and 6 subdivided into trustee voting areas; may vote on area or district basis.

Provisions of A. & J. R. 1954 (48) 1783 make up this section.

§ 21-3712.1. Vacancies.

Provisions of the second paragraph of § 1 of A. & J. R. 1953 (48) 219 make up this section.

CHAPTER 54.

PICKENS COUNTY.

Sec.

21-3791. County board of education.

21-3792. Pickens County School Dis-
trict A.

21-3793. Revolving fund for Pickens Coun-
ty School District A.

Sec.

21-3794. Bonds of employees of Pickens
County School District A.

21-3795. Additional trustees for school dis-
trict.

21-3802. [Repealed.]

§ 21-3791. County board of education.

Provisions from A. & J. R. 1952 (47) 1717 make up this section.

§ 21-3792. Pickens County School District A.

Provisions from A. & J. R. 1953 (48) 20 make up this section.

- § **21-3793. Revolving fund for Pickens County School District A.**
Provisions from A. & J. R. 1953 (48) 248 make up this section.
- § **21-3794. Bonds of employees of Pickens County School District A.**
Provisions from A. & J. R. 1953 (48) 248 make up this section.
- § **21-3795. Additional trustees for school district.**
Provisions from A. & J. R. 1952 (47) 1909 make up this section.
- § **21-3802. Levy.**
Repealed by A. & J. R. 1953 (48) 20.

CHAPTER 55.

RICHLAND COUNTY.

Article 3.

School Districts Generally.

Sec.
21-3881.1. Trustees of school districts
other than No. 1.

Sec.

21-3882. [Repealed.]

21-3885. [Repealed.]

ARTICLE 3.

School Districts Generally.

- § **21-3881. Names, etc., of school districts.**
Editor's note. — The districts in Rich- solidated to four in number, designated
land County have now been further con- as Districts Nos. 1, 2, 3 and 5.
- § **21-3881.1. Trustees of school districts other than No. 1.**
Provisions from A. & J. R. 1952 (47) 2006, as amended by A. & J. R. 1953
(48) 1209, make up this section.
- § **21-3882. Trustees of school districts; election and term.**
Repealed by A. & J. R. 1952 (47) 2006.
Cross reference.—See now § 21-3881.1.
- § **21-3884. Sections not applicable to Districts 1 and 4.**
Editor's note.—Since the repeal of § 21- reference to that section becomes mean-
3882 by A. & J. R. 1952 (47) 2006 the ingless and may be considered deleted.
- § **21-3885. Trustees of Olympia School District No. 4.**
Repealed by A. & J. R. 1952 (47) 2006.
Cross reference.—See now § 21-3881.1.

CHAPTER 56.

SALUDA COUNTY.

Sec.
21-3962. [Repealed.]
21-3963.1. Funds and levies for school pur-
poses; budgets; borrowing; ex-
penditures.

Sec.

21-3964. [Repealed.]

21-3965. [Repealed.]

21-3966. [Repealed.]

- § **21-3962. Trustees to file budgets.**
Repealed by A. & J. R. 1953 (48) 249.
Cross reference.—See now § 21-3963.1.
- § **21-3963.1. Funds and levies for school purposes; budgets; borrowing; ex-
penditures.**
Provisions of A. & J. R. 1953 (48) 249 make up this section.
- § **21-3964. County unit school levy.**
Repealed by A. & J. R. 1952 (47) 2005.
Cross reference.—See now § 21-3963.1.

§ 21-3965. Borrowing in anticipation thereof.

Repealed by A. & J. R. 1953 (48) 249.

Cross reference.—See now § 21-3963.1.

§ 21-3966. High school building fund.

Repealed by A. & J. R. 1952 (47) 2005.

Cross reference.—See now § 21-3963.1.

§ 21-3967. Allocation of unpledged school fund balances.

Editor's note.—There are now only two school districts in Saluda County.

CHAPTER 57.

SPARTANBURG COUNTY.

Sec.

21-4000. County board of education; county superintendent; school districts; trustees; school superintendents; finances.

Sec.

21-4001 to 21-4011. [Repealed.]

21-4013 to 21-4022. [Repealed.]

21-4024 to 21-4027. [Repealed.]

21-4030. [Repealed.]

§ 21-4000. County board of education; county superintendent; school districts; trustees; school superintendents; finances.

Provisions of A. & J. R. 1952 (47) 2113 make up this section.

§§ 21-4001 to 21-4011. County board; personnel; county superintendent; financial objectives; capital outlays.

Repealed by A. & J. R. 1952 (47) 2113.

§§ 21-4013 to 21-4022. Superintendent administrative officer; consolidation of districts; trustees; budgets and levy.

Repealed by A. & J. R. 1952 (47) 2113.

§§ 21-4024 to 21-4027. Accounting; school superintendents; levy and apportionment.

Repealed by A. & J. R. 1952 (47) 2113.

§ 21-4030. Credit of school funds received by treasurer.

Repealed by A. & J. R. 1952 (47) 2113.

CHAPTER 58.

SUMTER COUNTY.

**Article 1.
General Provisions.**

Sec.

21-4050. County board of education.

21-4053. County equalizing school tax levy.

Article 1.1.**School District No. 2.**

21-4056. Superintendent; funds; use of sinking funds; tax levies and budgets.

21-4057. Treasurer.

**Article 2.
School District No. 17.**

Sec.

21-4063. [Repealed.]

21-4072. [Repealed.]

21-4072.1. Budgets; contracts.

21-4078. Investment of funds not needed immediately.

ARTICLE 1.

*General Provisions.***§ 21-4050. County board of education.**

Provisions of A. & J. R. 1953 (48) 131 make up this section.

§ 21-4051. Budgets.

Editor's note.—Repealed as to School District No. 17 by A. & J. R. 1952 (47) 2036, 2077. See now, as to that district, §§ 21-4056 and 21-4072.1.

§ **21-4053. County equalizing school tax levy.**

Provisions of A. & J. R. 1953 (48) 1266 make up this section.

ARTICLE 1.1.

School District No. 2.

§ **21-4056. Superintendent; funds; use of sinking funds; tax levies and budgets.**

Provisions of §§ 1, 2, 7, 8, 9, A. & J. R. 1952 (47) 2077 make up this section.

§ **21-4057. Treasurer.**

Provisions of A. & J. R. 1953 (48) 309 make up this section.

ARTICLE 2.

School District No. 17.

§ **21-4063. Jurisdiction of county board of education over district.**

Repealed by A. & J. R. 1952 (47) 2036.

§ **21-4072. Budgets; contracts.**

Repealed by A. & J. R. 1952 (47) 2036.

Cross reference.—See now § 21-4072.1.

§ **21-4072.1. Budgets; contracts.**

Provisions from A. & J. R. 1952 (47) 2036 make up this section.

§ **21-4078. Investment of funds not needed immediately.**

Provisions of A. & J. R. 1953 (48) 254 make up this section.

CHAPTER 59.

UNION COUNTY.

Sec.

21-4150. County unit system of schools.

21-4151 to 21-4175. [Repealed.]

Sec.

21-4176. Abandonment of school property.

21-4177. Uniform pay of teachers.

§ **21-4150. County unit system of schools.**

Provisions from A. & J. R. 1952 (47) 2104 make up this section.

§§ **21-4151 to 21-4175. General provisions and financial matters.**

Repealed by A. & J. R. 1952 (47) 2104.

Cross reference.—See now § 21-4150.

§ **21-4176. Abandonment of school property.**

Provisions of §§ 1 and 7 of A. & J. R. 1953 (48) 314 make up this section.

§ **21-4177. Uniform pay of teachers.**

Provisions of A. & J. R. 1953 (48) 445 make up this section.

CHAPTER 60.

WILLIAMSBURG COUNTY.

Article 1.

General Provisions.

Sec.

21-4201. [Repealed.]

Sec.

21-4200. County board of education; appointment and term.

ARTICLE 1.

General Provisions.

§ **21-4200. County board of education; appointment and term.**

Provisions of A. & J. R. 1953 (48) 81 make up this section.

§ 21-4201. **County board of education; appointment; terms; vacancies.**

Repealed by A. & J. R. 1953 (48) 81.

§ 21-4202. **School trustees and officials not eligible.**

Editor's note.—There is now only one school district in Williamsburg County.

§ 21-4206. **County board fund; disposition of poll tax collections.**

Editor's note.—There is now only one school district in Williamsburg County.

§ 21-4209. **Budgets.**

Editor's note.—There is now only one school district in Williamsburg County.

§ 21-4211. **Tuition paid when pupils attend school in other districts.**

Editor's note.—There is now only one school district in Williamsburg County.

§ 21-4212. **Levy of tax to pay such tuition charges.**

Editor's note.—There is now only one school district in Williamsburg County.

§ 21-4213. **Tuition charges to accounts of several districts.**

Editor's note.—There is now only one school district in Williamsburg County.

§ 21-4217. **Gifts.**

Editor's note.—There is now only one school district in Williamsburg County.

§ 21-4218. **Investment of school district sinking fund.**

Editor's note.—There is now only one school district in Williamsburg County.

§ 21-4219. **Pergamos School District No. 29 exempted.**

Editor's note.—There is no longer any such district, there being now only one school district in Williamsburg County.

ARTICLE 2.

Trustees of Certain School Districts.

§§ 21-4231 to 21-4236. **Trustees of certain school districts.**

Editor's note.—All of the districts affected have been abolished, there being now only one school district in Williamsburg County.

ARTICLE 3.

Williamsburg High School.

§§ 21-4241 to 21-4244. **Williamsburg High School.**

Editor's note.—There is now only one school district in Williamsburg County.

ARTICLE 5.

Kingstree Public School District.

§§ 21-4261 to 21-4267. **Kingstree Public School District.**

Editor's note.—There is no longer any such district, there being now only one school district in Williamsburg County.

CHAPTER 61.

YORK COUNTY.

**Article 3.
School Trustees.**

- Sec.
21-4331. [Superseded.]
21-4331.1. Trustees in Clover School District No. 2; taxes.
21-4331.2. Trustees of Rock Hill School District No. 3.
21-4331.3. Trustees in York School District No. 1; taxes.
21-4331.4. Trustees in Fort Mill School District No. 4; taxes.
21-4332 to 21-4336. [Superseded.]

**Article 6.
Fort Mill School District No. 28.**

- Sec.
21-4391 to 21-4393. [Superseded.]

**Article 7.
Clover School District No. 37**
21-4401 to 21-4408. [Superseded.]**Article 8.
York Consolidated School District No. 10.**
21-4411 to 21-4416. [Superseded.]

ARTICLE 2.

*Financial Matters.***§ 21-4312. County tax levy for school purposes.**

Cross references.—As to levy of taxes in York School District No. 1, see § 21-4331.3; Clover School District No. 2, see

§ 21-4331.1 and Fort Mill School District No. 4, see § 21-4331.4.

§ 21-4313. Taxes in certain districts.

Editor's note.—There are now only four districts in York County. They were created since this section was enacted. It may be doubted whether the last sentence of this section applies to the new districts, even though under old names.

Cross references.—As to levy of taxes in York School District No. 1, see § 21-4331.3; Clover School District No. 2, see § 21-4331.1 and Fort Mill School District No. 4, see § 21-4331.4.

§ 21-4314. High school tax levy.

Cross references.—As to levy of taxes in York School District No. 1, see § 21-4331.3; Clover School District No. 2, see

§ 21-4331.1 and Fort Mill School District No. 4, see § 21-4331.4.

§ 21-4315. Distribution of proceeds of such tax.

Cross references.—As to levy of taxes in York School District No. 1, see § 21-4331.3; Clover School District No. 2, see

§ 21-4331.1 and Fort Mill School District No. 4, see § 21-4331.4.

§ 21-4316. Borrowing to purchase busses.

Editor's note.—There are now only four districts in York County. They were created since this section was enacted. It

may be doubted whether the last sentence of this section applies to the new districts, even though under old names.

ARTICLE 3.

*School Trustees.***§ 21-4331. Qualifications of trustees.**

Superseded by A. & J. R. 1953 (48) 50, 463 and 1954 (48) 1526, 1801.

Cross reference.—See §§ 21-4331.1 to 21-4331.4 for school districts, trustees, etc.

§ 21-4331.1. Trustees in Clover School District No. 2; taxes.

Provisions of A. & J. R. 1953 (48) 50, 52 make up this section.

§ 21-4331.2. Trustees of Rock Hill School District No. 3.

Provisions of A. & J. R. 1953 (48) 463 make up this section.

§ 21-4331.3. Trustees in York School district No. 1; taxes.

Provisions of A. & J. R. 1954 (48) 1526 make up this section.

§ 21-4331.4. Trustees in Fort Mill School District No. 4; taxes.

Provisions of A. & J. R. 1954 (48) 1801 make up this section.

§§ 21-4332 to 21-4336. Vacancies on certain boards; expenses of election.

Superseded by A. & J. R. 1953 (48) 50, 463 and 1954 (48) 1526, 1801.

Cross reference.—See §§ 21-4331.1 to 21-4331.4 for school districts, trustees, etc.

§ 21-4338. Section 21-4337 not applicable in certain districts.

Editor's note. — There are now only four districts in York County. See §§ 21-4331.1 et seq.

ARTICLE 4.

Trustees of Certain School Districts.

§§ 21-4351 to 21-4360. Trustees of certain school districts.

Editor's note.—There are no longer any such districts, hence these sections are obsolete.

ARTICLE 5.

Rock Hill School District No. 12.

§§ 21-4381 to 21-4385. Rock Hill School District No. 12.

Editor's note. — There are now only four school districts in York County, one of which is called Rock Hill School District No. 3. It is not believed that this new district is the same district as the old district No. 12 and hence it is believed that these sections no longer apply to anything.

ARTICLE 6.

Fort Mill School District No. 28

§§ 21-4391 to 21-4393. Trustees; levy and collection of such tax.

Superseded by A. & J. R. 1954 (48) 1801.

Cross reference.—See now § 21-4331.4.

ARTICLE 7.

Clover School District No. 37.

§§ 21-4401 to 21-4408. Clover School District No. 37.

Superseded by A. & J. R. 1953 (48) 50.

Cross reference.—See now § 21-4331.1.

ARTICLE 8.

York Consolidated School District No. 10.

§§ 21-4411 to 21-4416. York Consolidated School District No. 10.

Superseded by A. & J. R. 1954 (48) 1526.

Cross reference.—See now § 21-4331.3.

Title 22.**Educational Institutions.**

- Chap. 1.1. State Institution Bonds, §§ 22-21 to 22-39.
 3. The University of South Carolina, §§ 22-101 to 22-129.
 4. The Clemson Agricultural College of South Carolina, § 22-212.
 6. The Medical College, §§ 22-351 to 22-368.
 9. John De La Howe School, § 22-510.1.
 10. South Carolina State College, §§ 22-551 to 22-557.

CHAPTER 1.1.**STATE INSTITUTION BONDS.**

- | | |
|---|---|
| Sec. | Sec. |
| 22-21. State institution defined. | 22-30. Full faith and credit of State pledged to pay bonds. |
| 22-22. Tuition fees required at State institutions; "State Board" defined. | 22-31. Bonds negotiable; registration. |
| 22-23. Remittance and application of tuition fees. | 22-32. Denomination, interest rate, maturity and redemption. |
| 22-24. Application for funds for permanent improvements and pay certain expenses. | 22-33. Execution of bonds and coupons; form, denomination, etc. |
| 22-25. Authority of State Board as to such applications. | 22-34. Tax exempt status. |
| 22-26. When State Board may request issuance of State institution bonds. | 22-35. Bonds as legal investments. |
| 22-27. Governor and State Treasurer may authorize issue of bonds. | 22-36. Sale of bonds. |
| 22-28. Bonds may be issued in one issue on several applications. | 22-37. Deposit and use of proceeds of bonds. |
| 22-29. Maximum amount of outstanding bonds. | 22-38. Tuition fees to be segregated for payment of bonds; investment thereof; disposition of other tuition fees. |
| | 22-39. Sufficiency of tuition fees to pay bonds. |

§ 22-21. State institution defined.

The several State supported institutions of higher learning, within the contemplation of this chapter, are declared to be:

The University of South Carolina,
 The Clemson Agricultural College of South Carolina,
 The Citadel,
 The Medical College of South Carolina,
 Winthrop College and
 The Colored Normal, Industrial, Agricultural and Mechanical College.

Hereafter in this chapter such institutions shall be denoted by the term "*State institution*."

1953 (48) 169.

This chapter neither conflicts with nor modifies or repeals § 22-56. Atty. Gen. Op., Apr. 27, 1954.

§ 22-22. Tuition fees required at State institutions; "State Board" defined.

Tuition fees shall be required to be paid by each individual attending any State institution in such amount and under such conditions as the respective boards of trustees of such State institutions shall prescribe, with the approval of the State Budget and Control Board, hereafter in this chapter referred to as the "*State Board*." The provisions of this section shall not be construed as requiring uniformity of tuition fees at such State institutions, nor shall they preclude a higher scale for nonresidents of the State.

1953 (48) 169.

§ 22-23. Remittance and application of tuition fees.

All tuition fees received by any State institution shall be remitted from time to time to the State Treasurer under such regulations as he shall prescribe. The State Treasurer shall apply the same as directed by this chapter.

1953 (48) 169.

§ 22-24. Application for funds for permanent improvements and pay certain expenses.

The respective boards of trustees of such State institutions may make application to the State Board for funds to be used for any one or more of the following purposes: (a) to construct, reconstruct, maintain, improve, furnish and refurnish the buildings and other permanent improvements for such State institutions, (b) to defray the cost of acquiring or improving land needed as sites for such improvements or for the campus of any such State institution or (c) to reimburse such institution for expenses incurred in anticipation of the issuance of such bonds. Hereafter in this chapter such items shall be denoted by the term "*improvement*". Such application shall contain:

- (1) A description of the improvement sought;
- (2) An estimate of its cost;
- (3) The number of regularly enrolled students at such State institution at the close of the last preceding academic semester or term (exclusive of any summer school semester or term);
- (4) The schedule of tuition fees in effect;
- (5) A suggested maturity schedule for bonds issued pursuant to this chapter; and
- (6) A statement showing the unmatured State institution bonds theretofore issued for such State institution.

Such application shall contain an agreement upon the part of the board of trustees that such schedule of tuition fees shall be revised from time to time and whenever necessary to provide the annual principal and interest requirements on the proposed bonds and on all outstanding State institution bonds issued for such State institution.

1953 (48) 169; 1954 (48) 1708.

Effect of amendment.—The amendment changed the first sentence as to (b) by providing for the acquisition of land for campuses and the improvement of sites and adding (c).

§ 22-25. Authority of State Board as to such applications.

The State Board may approve, in whole or in part, or modify in any way that it sees fit any application made by any board of trustees of any of the State institutions and may direct the application of the principal proceeds of any bonds issued pursuant to this chapter for such purpose, if it shall have found:

- (1) That a definite and immediate need for such improvement exists;
- (2) That a satisfactory and proper schedule of tuition fees is in effect at such State institution;
- (3) That such schedule of tuition fees, as applied to the regularly enrolled students at such State institution, on the basis of the number of students regularly enrolled at such State institution at the close of the last preceding academic semester or term (exclusive of any summer school semester or term), will, if multiplied by the number of years for which the bonds herein provided for shall be outstanding, result in the production of a sum equal to not less than one hundred ten per cent of the estimated aggregate principal and interest requirements of all State institution bonds issued for such State institution to be outstanding if such application be approved; and
- (4) That the board of trustees of such State institution has agreed that such schedule of tuition fees may be revised from time to time and whenever necessary to provide not less than the sum needed to pay the annual principal and interest

requirements on the proposed bonds and on all outstanding State institution bonds issued for such State institution.

1953 (48) 169.

Supreme Court may determine minimum coverage of fund for payment of bonds.—

The Supreme Court, in a taxpayer's suit to determine the validity of bonds proposed to be issued under this chapter, may determine the minimum coverage deemed necessary to adequately secure the bonds so issued. *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

The coverage of 110% provided in paragraph (3) of this section is too small to meet the test for the sufficiency of a special fund to secure the payment of general State obligations where the question of the creation of such obligations is not submitted to the qualified electors of the State as required by S. C. Const., Art. 10, § 11. *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

There must be a coverage of at least 150%.—No application by any State-sup-

ported institution for the issuance of bonds under the terms of this chapter shall be granted unless it is found, in addition to the other requirements set forth therein, that "such schedule of tuition fees, as applied to the regularly enrolled students at such State institution, on the basis of the number of students regularly enrolled at such State institution at the close of the last preceding academic semester or term (exclusive of any summer school semester or term), will, if multiplied by the number of years for which the bonds herein provided for shall be outstanding, result in the production of a sum equal to not less than "150%" of the estimated aggregate principal and interest requirements of all State institution bonds issued for such State institution to be outstanding if such application be approved." *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

§ 22-26. When State Board may request issuance of State institution bonds.

Upon making the finding required of it by § 22-25, the State Board shall transmit to the Governor and to the State Treasurer a request for the issuance of State institution bonds. Such request shall set forth:

(1) The name of the State institution seeking funds, the amount of its application and the annual principal and interest requirements on all outstanding State institution bonds issued for such State institution;

(2) A statement that the State Board has made the findings required of it by § 22-25, and the extent to which it has approved or modified the original application;

(3) The proposed maturity schedule of the bonds;

(4) The anticipated interest cost for each year during the life of the bonds;

(5) The anticipated aggregate annual principal and interest requirements for the bonds;

(6) The numbers and maturity dates of the bonds which shall be subject to redemption prior to their stated maturities;

(7) The proposed redemption premium schedule;

(8) The number of regularly enrolled students at such State institution at the close of the last preceding academic semester or term (exclusive of any summer school semester or term); and

(9) The tuition fee schedule in effect at such State institution.

1953 (48) 169.

§ 22-27. Governor and State Treasurer may authorize issue of bonds.

The Governor and the State Treasurer shall examine such request and, if they shall jointly approve it and, for themselves, determine that the schedule of tuition fees in force at such State institution will, upon the basis of the number of regularly enrolled students at such State institution at the close of the last preceding academic semester or term (exclusive of any summer school semester or term), produce funds sufficient to meet the principal and interest requirements on the proposed bonds and on all outstanding State institution bonds issued for such State institution and provide the margin for such principal and interest requirements

to the extent required by paragraph (3) of § 22-25, they may provide for the issuance of State institution bonds in the amount approved by the State Board.

1953 (48) 169.

Cross reference.—As to minimum coverage of fund for payment of bonds, see note to § 22-25.

§ 22-28. Bonds may be issued in one issue on several applications.

If it shall happen that more than one application by State institutions shall receive the approvals required by §§ 22-25 to 22-27, at approximately the same time, the State institution bonds in an amount equal to the aggregate of the approved applications may be issued as a single issue.

1953 (48) 169.

§ 22-29. Maximum amount of outstanding bonds.

Other provisions of this chapter to the contrary notwithstanding, there shall not be outstanding at any given time State institution bonds for all institutions in excess of fourteen million dollars.

1953 (48) 169.

§ 22-30. Full faith and credit of State pledged to pay bonds.

For the payment of the principal and interest on all State institution bonds, whose issuance is authorized by this chapter, there shall be pledged the full faith, credit and taxing power of the State.

1953 (48) 169.

§ 22-31. Bonds negotiable; registration.

State institution bonds issued under this chapter shall be in the form of negotiable coupon bonds, payable to bearer, with the privilege to the holder of having them registered in his name on the books of the State Treasurer as to principal only or as to both principal and interest and such principal and interest, as the case may be, thus made payable to the registered holder, subject to such conditions as the State Treasurer may prescribe. State institution bonds so registered as to principal in the name of the holder may thereafter be registered as payable to bearer and made payable accordingly.

1953 (48) 169.

§ 22-32. Denomination, interest rate, maturity and redemption.

The State institution bonds shall be in the denomination of one thousand dollars each. They shall bear interest, payable semiannually, at a rate or rates not exceeding the maximum interest rate specified in the State Board's request for the issuance of the State institution bonds. Each issue of State institution bonds shall mature in annual series or installments, the last of which shall mature not more than twenty years after the date of the bonds, but no bonds shall be issued under the authority of this chapter to mature after the year 1978. The instalments or series may be equal or unequal in amount. The State institution bonds may, in the discretion of the State Board, be made subject to redemption at par and accrued interest, plus such redemption premium as it shall approve, and on such occasions as it may specify in its request for the issuance of the State institution bonds. The State institution bonds shall not be redeemable before maturity unless they contain a statement to that effect.

1953 (48) 169.

Quoted in *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

§ 22-33. Execution of bonds and coupons; form, denomination, etc.

All State institution bonds issued pursuant to this chapter shall be signed by the Governor and the State Treasurer. In the instance of the Governor, he may sign such obligations by a facsimile of his signature. The great seal of the State

shall be affixed to, impressed or reproduced upon each of them and shall be attested by the Secretary of State. The coupons attached to the State institution bonds shall be authenticated by a facsimile signature of the State Treasurer who is in office on the date of such State institution bonds. The delivery of the State institution bonds so executed and authenticated shall be valid notwithstanding any changes in officers or seal occurring after such execution or authentication. The State institution bonds shall be issued in such form and denomination and with such provisions as to time, place or places and medium of payment as may be determined by the State Board within the limitations of this chapter.

1953 (48) 169.

§ 22-34. Tax exempt status.

The bonds authorized by this chapter and all interest to become due thereon shall have the tax exempt status prescribed by § 65-4.1.

1953 (48) 169.

§ 22-35. Bonds as legal investments.

It shall be lawful for all executors, administrators, guardians, fiduciaries and sinking fund commissions to invest any moneys in their hands in State institution bonds.

1953 (48) 169.

§ 22-36. Sale of bonds.

The State institution bonds provided for herein shall be sold by the Governor and the State Treasurer upon sealed proposals, after publication of notice of such sale one or more times at least fifteen days before such sale in a newspaper of general circulation in the State and also in a financial paper published in New York City which regularly publishes notices of sale of state or municipal bonds. In all calls for bids, the right shall be reserved to reject all bids and readvertise for the sale of such State institution bonds. Upon the opening of bids the Governor and the State Treasurer shall determine the most advantageous bid and if one hundred ten percent of the aggregate principal and interest requirements on (1) bonds sold in accordance with the most advantageous bid and (2) all outstanding State institution bonds issued for such State institution is within the estimate of the tuition fees to be received by the State institution or institutions for which such bonds are issued, made on the basis required by paragraph (3) of § 22-25, and if they shall find that one hundred ten percent of such aggregate principal and interest requirements does not exceed such estimate, they may award such State institution bonds on such bid, at a price not less than par and accrued interest to the date of delivery. For the purpose of bringing about a successful sale of such bonds, the State Board may do all things ordinarily and customarily done in connection with the sale of state or municipal bonds. All expenses incident to the sale of such bonds shall be paid from the proceeds of the bonds.

1953 (48) 169.

Cross reference.—As to minimum coverage of fund for payment of bonds, see note to § 22-25.

§ 22-37. Deposit and use of proceeds of bonds.

The proceeds of sale of State institution bonds shall be received by the State Treasurer and placed in a fund to the credit of the State Board subject to withdrawal on their order, except that all accrued interest received shall be used by him to discharge the first instalment of interest coming due and any premium shall be used to discharge the first instalment of principal coming due on such bonds. On the occasion that he receives the proceeds of State institution bonds from the purchaser, the State Treasurer shall segregate the proceeds for the account of the State institution or institutions for which the bonds shall be issued. The pur-

chasers of the State institution bonds shall in no wise be liable for the application of the proceeds of the bonds to the purposes for which they are intended.

1953 (48) 169.

§ 22-38. Tuition fees to be segregated for payment of bonds; investment thereof; disposition of other tuition fees.

Immediately following the determination of the Governor and the State Treasurer to provide for the issuance of State institution bonds, the State Treasurer shall segregate into a special fund all tuition fees of the State institution for which State institution bonds are to be issued and shall apply such special fund to the payment of the principal, interest and redemption premium, if any, on all bonds issued pursuant to this chapter for such State institution, and for no other purpose. The State Treasurer may, in his discretion, invest any part of such special fund in direct obligations of the United States or of the State. Whenever the aggregate of the cash and the then market value of the securities in such special fund shall equal the aggregate principal and interest requirements on all bonds issued pursuant to this chapter for such State institution then outstanding, the tuition fees of such State institution shall revert to the general fund of the State.

It is not intended that the provisions of this section shall preclude there being issued and outstanding more than one issue of State institution bonds whose proceeds shall be applied, in whole or in part, for any one particular State institution, if the tuition fees of such particular State institution will produce sufficient funds to meet the principal and interest requirements on the proposed issue and all outstanding issues for such institution made pursuant to this chapter. It is merely intended that so long as there are outstanding bonds issued for any State institution, the tuition fees of such State institution shall be applied within the limitations of this section to the payment of the principal, interest and redemption premium, if any, of all bonds issued for improvements at such State institution pursuant to this chapter, and for no other purpose. Nor is it intended that any preference or priority as to the proceeds of the tuition fee fund of any State institution be created.

All other tuition fees received by the State Treasurer shall become a part of the general State fund.

1953 (48) 169.

Section not impliedly repealed.—The provisions of this section setting apart tuition fees as a special fund were not impliedly repealed by § 72 of the 1953 General Appropriation Act [1953 (48) 504]. *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

Fees collected long prior to issuance of bonds not segregated.—This section does not contemplate the segregation of tuition fees earned and collected long prior to the issuance of bonds. *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

§ 22-39. Sufficiency of tuition fees to pay bonds.

The General Assembly finds that the tuition fees charged at the several State institutions, if maintained and applied in the manner prescribed by this chapter, will be sufficient to provide for the payment of the principal and interest on State institution bonds issued pursuant to this chapter, without resorting to a property tax.

1953 (48) 169.

Legislative findings not binding on courts.—See *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

CHAPTER 2.

SCHOLARSHIPS.

§ 22-56. Free tuition for certain veterans' children.

Chapter 1.1, Title 22, (§§ 22-21 et seq.) neither conflicts with nor modifies or repeals this section. Atty. Gen. Op., Apr. 27, 1954.

CHAPTER 3.

THE UNIVERSITY OF SOUTH CAROLINA.

Sec.

22-101 to 22-120. [Repealed.]
 22-121. Composition of board of trustees.
 22-122. Terms of elected members.
 22-123. Vacancies; compensation.
 22-124. Board a corporation; powers.

Sec.

22-125. President not to be atheist.
 22-126. Meetings of board.
 22-127. Property vested in university.
 22-128. Right of condemnation.
 22-129. Same; another provision.

§§ 22-101 to 22-120. The University of South Carolina.

Repealed by A. & J. R. 1953 (48) 368. A. & J. R. 1954 (48) 1752 also repealed § 22-120.

§ 22-121. Composition of board of trustees.

The board of trustees of the University of South Carolina shall be composed of the Governor of the State, the State Superintendent of Education and the chairmen of the committees on education of the Senate and House of Representatives, who shall be members ex officio of said board, and fourteen other members, one from each judicial circuit in this State, to be elected by the general vote of the General Assembly as hereinafter provided.

1953 (48) 368.

§ 22-122. Terms of elected members.

In the first election, the terms of office of those elected from the first, third, fifth, seventh, ninth, eleventh and thirteenth judicial circuits were two years and of those elected from the second, fourth, sixth, eighth, tenth, twelfth and fourteenth judicial circuits were four years. In all subsequent elections the regular term of office of each elective trustee shall be four years. But any such trustee shall continue to function as a trustee after his term has expired until his successor shall have been elected and qualified. The General Assembly shall hold elections every two years for the purpose of selecting successors of those trustees whose terms are then expiring. The term of office of an elective trustee shall commence on the first day of April of the year in which such trustee under this plan is scheduled to be elected.

1953 (48) 368.

§ 22-123. Vacancies; compensation.

In case a vacancy or vacancies should occur in the board the Governor may fill it by appointment until the next session of the General Assembly. Each member of said board shall be reimbursed for his actual expenses in attending meetings of the board but he shall receive no compensation otherwise for his services.

1953 (48) 368.

§ 22-124. Board a corporation; powers.

The board of trustees is a body corporate and politic, in deed and in law, under the name of "*The University of South Carolina*." Said corporation has the following powers:

- (1) To have perpetual succession;
- (2) To sue and be sued by the corporate name;
- (3) To have a common seal and to alter the same at pleasure;
- (4) To make contracts, to have, to hold, to purchase and to lease real estate and personal property for corporate purposes and to sell and dispose of personal property and any buildings that are deemed by it as surplus property or not further needed and any buildings that it may need to do away with for the purpose of making room for other construction; except that it shall not sell or dispose of any of its real estate (other than buildings) except with the consent of the General Assembly;
- (5) To appoint a chairman of the board of trustees and to appoint a University president, treasurer and secretary and in the appointment of these latter three to prescribe their duties and their terms of office and to fix their compensation;

(6) To appoint or otherwise provide for the appointment of subordinate and assistant officers and agents, faculty members, instructors and other employees prescribing the terms of their employment and their duties and fixing their compensation;

(7) To make bylaws and all rules and regulations deemed expedient for the management of its affairs and its own operations not inconsistent with the Constitution and laws of this State or of the United States;

(8) To condemn land for corporate purposes as set forth in §§ 22-128 and 22-129;

(9) To fix tuition fees and other charges for students attending the university, but these shall not be inconsistent with statutes by which the General Assembly undertakes to fix the same and children of full time faculty members in the university shall be exempt from tuition fees;

(10) To confer degrees upon students and such other persons as in the opinion of the board of trustees may be qualified to receive them;

(11) To accept, receive and hold all moneys or other properties, real and personal, that may be given, conveyed, bequeathed or devised to the university and to use the same for the benefit of the university but in those cases in which such money or property is received charged with any trust then in every case such money or property shall be held and used strictly in accordance with the terms of such trust, except that when the terms of any such trust would require something to be done other than merely to administer the trust no obligation in receiving the trust over and above merely its administration shall be binding upon the university or the State except when any such trust is accepted by the General Assembly;

(12) To assign any member of the faculty to additional duties in any other university department than that in which the faculty member may at the time be working and without additional salary;

(13) In all investigations touching the affairs of the university, to compel by subpoena, rule and attachment witnesses to appear and testify and papers to be produced and read before the board;

(14) To adopt such measures and make such regulations as may in the discretion of the board of trustees be necessary for the proper operation of said university;

(15) To appoint for the university a board of visitors of such number as the board of trustees may deem expedient and to regulate the terms during which the members of such board shall serve and to prescribe the functions of such board;

(16) To remove any officer, faculty member, agent or employee for incompetence, neglect of duty, violation of university regulations or conduct unbecoming a person occupying such a position;

(17) To appoint an executive committee not exceeding five members of the board who shall have all the powers of the board during the interim between meetings of the board but not the power to do anything which is inconsistent with the policy or action theretofore taken by the board and such executive committee shall at each meeting of the board report fully all action taken by it during the interim; and

(18) To appoint committees of the board of trustees and/or officers and/or members of the faculty of the university, with such power and authority and for such purposes in connection with the operation of the university as the board of trustees may deem wise.

1953 (48) 368.

§ 22-125. President not to be atheist.

The board of trustees shall take care that the president of the university shall not be an atheist or infidel.

1953 (48) 368.

§ 22-126. Meetings of board.

The board of trustees shall meet in Columbia twice a year, once within forty-five days after the adjournment of the General Assembly, but in no event later than June tenth of such year, and again in the month of October of such year, the time and place of each such regular meeting to be fixed by the chairman of the board or otherwise as the board of trustees shall provide. The Governor of the State shall preside at all regular and special meetings of the board of trustees in which he is in attendance; at those meetings at which the Governor is not in attendance the chairman of the board of trustees shall preside and in his absence such member shall preside as the board may select. The Governor, the chairman of the board of trustees and the president of the university shall each have the power to call a special meeting of the board of trustees and fix the time and place thereof. Any five members of the board shall likewise have this power. A majority of the members of the board of trustees shall constitute a quorum for the transaction of all business of the board but not less than a majority vote of the whole board shall be required for the election or removal of a president. It shall be the duty of the president and other officers as well as members of the faculty to attend meetings of the board of trustees when requested to do so.

Notice of the time and place of all meetings, both regular and special meetings, of the board of trustees shall be mailed by the secretary or his assistant to each trustee not less than five days before each meeting thereof.

1953 (48) 368.

§ 22-127. Property vested in university.

All property, real and personal, and rights of every description which have heretofore been vested in the South Carolina College and The University of South Carolina and the trustees of The University of South Carolina are vested in "The University of South Carolina."

1953 (48) 368.

§ 22-128. Right of condemnation.

The trustees of The University of South Carolina may, in their discretion, make use of the provisions of chapter 3 of Title 25 to acquire land for which funds are provided by the General Assembly.

1953 (48) 504.

§ 22-129. Same; another provision.

The University of South Carolina may condemn lands for university purposes, such right of condemnation to be subject to the same duties, liabilities and method of proceeding and with the same rights, powers and privileges as are conferred upon municipal corporations by and under article 4 of chapter 3 of Title 59. This right of condemnation is cumulative to any such right that the university now has or may hereafter have.

1953 (48) 368.

CHAPTER 4.

THE CLEMSON AGRICULTURAL COLLEGE OF SOUTH CAROLINA.

Article 1.

**Organization, Powers, Property, Income,
etc.**

Sec.

22-212. Divisions of public land fund under
act of Congress.

ARTICLE 1.

*Organization, Powers, Property, Income, etc.***§ 22-212. Division of public land fund under act of Congress.**

All sums which shall be received by the State from the United States government under the provisions of the act of Congress, approved August 30 1890 en-

titled "An Act to Apply a Portion of the Public Lands to the more Complete Endowment and Support of Colleges for the Benefit of Agricultural and Mechanical Arts Established under the Provisions of an Act of Congress approved July second, eighteen hundred and sixty-two," shall be equally divided between South Carolina State College and The Clemson Agricultural College of South Carolina to be applied to the purposes specified in said act.

1942 Code § 5744; 1932 Code § 5806; Civ. C. '22 § 2825; Civ. C. '12 § 1885; Civ. C. '02 § 1299; 1890 (20) 704; 1896 (22) 173; 1954 (48) 1722.

Effect of amendment.—The amendment of South Carolina to South Carolina State changed name of Colored Normal, Industrial, Agricultural and Mechanical College

CHAPTER 6.

THE MEDICAL COLLEGE.

Sec.	Sec.
22-351. Acceptance of transfer of property.	22-365. School of dentistry established at medical college.
22-352. Charter confirmed.	22-366. Trustees may use funds to construct buildings.
22-355. Organization and powers of board.	22-367. Standards for school of dentistry.
22-357. Trustees to make annual report.	22-368. Operation of school; staff.
22-359. Additional scholarships.	
22-364. Rules governing admissions not changed hereby.	

§ 22-351. Acceptance of transfer of property.

The State of South Carolina hereby expressly declares that it accepts the conveyance and transfer of the property, real and personal, of The Medical College of South Carolina and the State Treasurer may receive and securely hold such property, both real and personal, and execute the necessary papers and receipts therefor as soon as the trustees and faculty of The Medical College of South Carolina shall convey and transfer such property to the State.

1942 Code § 5794; 1932 Code § 5794; Civ. C. '22 § 2813; 1913 (28) 188; 1952 (47) 1875.

Effect of amendment.—The name of the institution was formerly The Medical College of the State of South Carolina.

§ 22-352. Charter confirmed.

The charter of The Medical College of South Carolina is hereby confirmed and extended with all the rights and privileges granted heretofore by the original act of incorporation or by any subsequent extension of its charter.

1942 Code § 5795; 1932 Code § 5795; Civ. C. '22 § 2814; 1913 (28) 188; 1952 (47) 1875.

Effect of amendment.—The name of the institution was formerly The Medical College of the State of South Carolina.

§ 22-355. Organization and powers of board.

The board of trustees shall elect one of its number to be chairman and elect a secretary and fix his salary. It shall elect professors and instructors in the departments of medicine and pharmacy and such other officers and employees as may be necessary for the proper conduct of the college and fix their compensation, fix the fees and charges of students and the rules for the government of the college and make such rules and bylaws as may be proper for the business of the college.

1942 Code § 5796; 1932 Code § 5796; Civ. C. '22 § 2815; 1913 (28) 188; 1937 (40) 486; 1953 (48) 402.

Effect of amendment.—The board formerly elected a president rather than a chairman.

§ 22-357. Trustees to make annual report.

The board of trustees shall meet annually at the call of the chairman of the board and at such meeting shall prepare and present to the General Assembly a report on the condition of the college and of their receipts and expenditures for the pre-

ceding year and shall also prepare for presentation to the General Assembly an estimate of the sum required for the maintenance of the college for the next succeeding year.

1942 Code § 5799; 1932 Code § 5799; Civ. C. '22 § 2818; 1913 (28) 188; 1953 (48) 402.

Effect of amendment.—The chairman who calls the meeting was formerly called the president.

§ 22-359. Additional scholarships.

There are hereby established at The Medical College of South Carolina eight scholarships to be granted by the board of trustees of The Medical College, one to an applicant from each of the six congressional districts in this State and two to applicants from the State at large in any of the four medical classes, such scholarships, however, to be granted only to applicants who shall be acceptable under the regular rules and procedure for admission to the college. Each of such scholarships shall include and provide free tuition, plus the sum of seventy-five dollars per month for the eight months, October to May inclusive, comprising the usual college session. The award of such scholarships shall be made by the committee on entrance, standing and deficiencies of The Medical College and based upon the scholastic records of the applicants. Each successful applicant, upon being notified of the award of such a scholarship and before entering upon his or her course of study or attendance at The Medical College thereunder, shall enter into a written contract with the board of trustees that following a one-year hospital internship after graduation he will do private general medical practice during one calendar year for each scholarship year in a rural community to be designated by the State Board of Health or in lieu thereof shall practice in a State medical institution designated by the Board of Health.

1948 (45) 1966; 1952 (47) 1875.

Effect of amendment.—The name of the institution was formerly The Medical College of the State of South Carolina.

§ 22-364. Rules governing admissions not changed hereby.

Nothing contained in §§ 22-359 to 22-363 shall be construed to alter in any manner the law, rules or regulations governing admissions of students to The Medical College of South Carolina and all admissions of beneficiaries of scholarships under said sections shall be likewise subject to approval by the admitting authorities in the same manner as otherwise provided by law.

1948 (45) 1966; 1952 (47) 1875.

Effect of amendment.—The name of the institution was formerly The Medical College of the State of South Carolina.

§ 22-365. School of dentistry established at medical college.

In addition to the present facilities, activities and schools of The Medical College of South Carolina, there is hereby created and established a four year school of dentistry, to be located in *Charleston*, as a part of the medical college and to be known as The School of Dentistry of The Medical College of South Carolina. The board of trustees of the college may commence the operation of such a school as soon as practicable.

1953 (48) 320.

§ 22-366. Trustees may use funds to construct buildings.

The board of trustees of the medical college shall use the funds which may be appropriated to construct buildings and additions to existing buildings to house and equip the school of dentistry, such buildings and equipment to be of such type and character as the board of trustees shall determine.

1953 (48) 320.

§ 22-367. Standards for school of dentistry.

The board of trustees may set, establish and maintain for the school of dentistry standards of scholarship and teaching which shall be in accord with standards approved by the council of dental education of the American Dental Association and perform all acts and functions necessary to carry on the school.

1953 (48) 320.

§ 22-368. Operation of school; staff.

The trustees of The Medical College of South Carolina shall operate the school and provide a staff of teachers and instructors and a dean who shall report direct to the president of The Medical College of South Carolina.

1953 (48) 320.

CHAPTER 9.

JOHN DE LA HOWE SCHOOL.

Sec.

22-510.1. Improved forestry practice.

§ 22-510.1. Improved forestry practice.

The trustees of the John De La Howe School may carry out an improved forestry practice on the timber holdings of the school property and apply the revenues derived therefrom for the further improvement and development of the school forest lands and for other school purposes.

1953 (48) 439.

CHAPTER 10.

SOUTH CAROLINA STATE COLLEGE.

Sec.

22-551. Establishment.

22-552. Trustees.

22-554. Take over property of Claflin College.

22-554.1. College to be separate from Claflin University, etc.

Sec.

22-555. General powers of board.

22-556. Buildings; courses of study, etc.; instructors to be negroes.

22-557. One-half of land script fund vested in trustees.

§ 22-551. Establishment.

There shall be established within this State a normal, industrial, agricultural and mechanical college for the higher education of the colored youth of the State and such college shall be known as South Carolina State College.

1942 Code § 5800; 1932 Code § 5800; Civ. C. '22 § 2819; Civ. C. '12 § 1879; Civ. C. '02 § 1293; 1896 (22) 174; 1954(48)1722.

Effect of amendment.—The amendment of South Carolina to South Carolina State College changed name of Colored Normal, Industrial, Agricultural and Mechanical College

§ 22-552. Trustees.

The College shall be under the management and control of a board of trustees, composed of seven members, six of whom shall be elected by the General Assembly, whose term of office shall be six years, those first elected having been elected for terms of two, four and six years, so that two of them go out of office every two years. The Governor of the State shall be ex-officio the seventh member of the board.

1942 Code § 5800; 1932 Code § 5800; Civ. C. '22 § 2819; Civ. C. '12 § 1879; Civ. C. '02 § 1293; 1896 (22) 174; 1954(48)1722.

Effect of amendment.—The amendment of South Carolina to South Carolina State College. The section has been edited to eliminate surplusage.

§ 22-554. Take over property of Claflin College.

The board of trustees of the College may take charge of, manage and control all of the real and personal property belonging to Claflin College, in whosoever

hands or custody the same may be now or hereafter found, and shall hold the same in trust for the benefit and uses of the College.

1942 Code § 5801; 1932 Code § 5801; Civ. C. '22 § 2820; Civ. C. '12 § 1880; Civ. C. '02 § 1294; 1896 (22) 174; 1954 (48) 1722.

Effect of amendment.—The amendment of South Carolina to South Carolina State College. The section has been edited to eliminate surplusage.

§ 22-554.1. College to be separate from Claflin University, etc.

The College shall forever be, and remain, free and separate from Claflin University and other colleges, schools or other institutions which are wholly or in part under the direction or control of any church or religious or sectarian denomination or society.

1942 Code § 5802; 1932 Code § 5802; Civ. C. '22 § 2821; Civ. C. '12 § 1881; Civ. C. '02 § 1295; 1896 (22) 174; 1909 (26) 213; 1954 (48) 1722.

Effect of amendment.—The amendment of South Carolina to South Carolina State College. The section has been edited to eliminate surplusage.

§ 22-555. General powers of board.

In the management of affairs of the college whenever it is found necessary to protect or to promote the interests of the State or whenever the trustees deem it right, proper or expedient for any reason the trustees may sell, purchase or exchange real estate. And the trustees shall fix the time and duration of all vacations to be given the students of the institution. The College shall have all the rights and privileges possessed prior to March 3 1896 by Claflin College.

1942 Code § 5802; 1932 Code § 5802; Civ. C. '22 § 2821; Civ. C. '12 § 1881; Civ. C. '02 § 1295; 1896 (22) 174; 1909 (26) 213; 1954 (48) 1722.

Effect of amendment.—The amendment of South Carolina to South Carolina State College. The section has been edited to eliminate surplusage.

§ 22-556. Buildings; courses of study, etc.; instructors to be negroes.

The board may provide all necessary suitable buildings upon a proper site for the purpose, establish a course of study covering the normal, industrial, agricultural and mechanical sciences, provide the necessary appliances for proper instruction in the same and select a proper corps of professors and instructors and fix their salaries. The principal or president and the corps of instructors shall be of the negro race.

1942 Code § 5803; 1932 Code § 5803; Civ. C. '22 § 2822; Civ. C. '12 § 1882; Civ. C. '02 § 1296; 1896 (22) 174; 1954 (48) 1722.

Effect of amendment.—The amendment of South Carolina to South Carolina State College. The section has been edited to eliminate surplusage.

§ 22-557. One-half of land scrip fund vested in trustees.

One-half of the fund known as the land scrip fund, to wit: ninety-five thousand and nine hundred dollars, shall be for the benefit of the College and shall be a perpetual fund, which shall forever remain undiminished, and the board may use the income thereon, to wit: six percent per annum, payable semi-annually, from July 1 1889 for the use and maintenance of the college.

1942 Code § 5805; 1932 Code § 5805; Civ. C. '22 § 2824; Civ. C. '12 § 1884; Civ. C. '02 § 1298; 1889 (20) 299; 1868 (14) 169; 1879 (17) 86; 1896 (22) 173; Const. Art. 11 § 8; 1954 (48) 1722.

Effect of amendment.—The amendment of South Carolina to South Carolina State College. The section has been edited to eliminate surplusage.

Title 23.
Elections.

- Chap. 1. General Provisions, § 23-7.
3. Polling Precincts and Voting Places, §§ 23-155 to 23-197.
4. Political Parties, Committees, Conventions, Nominations Other Than By Primary, Etc., §§ 23-256 to 23-265.1.
5. Conduct by Elections, §§ 23-372 to 23-376.
6.1. Voting by Members of Armed Forces, etc., §§ 23-441 to 23-441.21.

CHAPTER 1.
GENERAL PROVISIONS.

Sec.
23-7. Liability of radio station for defamatory statement of candidate.

§ 23-1. Short title.

Where Act No. 390 of 1953, 48 Stat. 692, providing for election in Anderson County for issuance of bonds, required election to be conducted in accord with provisions of this title, use of "Section" instead of "Title" in notice of election in referring to this title was patent error, but notice was more than substantial compliance with statute, which suffices in absence, as here, of any showing that anyone was misled by the manifest and inconsequential mistake. *Bolt v. Cobb*, ... S. C., 82 S. E. 2d 789 (1954).

§ 23-7. Liability of radio station for defamatory statement of candidate.

The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations and the agents and employees of any such owner, licensee or operator shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast by a candidate for political office in those instances in which, under the acts of Congress or the rules and regulations of the Federal Communications Commission, the broadcasting station or network is prohibited from censoring the material broadcast by such candidate, if the owner, licensee or operator shall have caused to be made at the conclusion of the broadcast the following announcement in substance: "The broadcast you have just heard was not censored in accord with the immunity from censorship extended legally qualified political candidates."

1952 (47) 1939.

CHAPTER 2.
QUALIFICATIONS AND REGISTRATION OF ELECTORS.

ARTICLE 2.

Requirement of and Qualifications for Registration.

§ 23-63. Opening registration books at courthouse.

Cross reference.—The reference in the books in municipal elections, see §§ 23-111 original should read: "As to registration to 23-118."

ARTICLE 4.

Special Provisions for Municipal Elections.

§ 23-115. Vacancies.

Editor's note.—The reference to § 23-112 in the second line in the original should be to § 23-114.

CHAPTER 3.

POLLING PRECINCTS AND VOTING PLACES.

ARTICLE 1.

Location of Precincts and Voting Places.

Article 1.

Locations of Precincts and Voting Places.

Sec.

23-155. Same; in Aiken County.

23-173. Same; in Fairfield County.

23-176. Same; in Greenville County.

23-179. Same; in Horry County.

23-182. Same; in Lancaster County.

Sec.

23-183. Same; in Laurens County.

23-185. Same; in Lexington County.

23-186. Same; in McCormick County.

23-191. Same; in Orangeburg County.

23-193. Same; in Richland County.

23-197. Same; in Union County.

§ 23-155. Same; in Aiken County.

In *Aiken* County there shall be the following voting precincts: East Aiken; West Aiken; Bath; Belvedere; Beach Island; Carolina Heights; Chinquapin; Clearwater No. 1; Clearwater No. 2; Eureka; Gloverville; Graniteville; Jackson; Langley; McTier; Millbrook No. 1; Millbrook No. 2; Montmorenci; Monetta; New Ellenton; New Holland; North Augusta; Oak Grove; Perry; Rocky Springs; Salley; Seivern; Shiloh; Shaw's Fork; Tabernacle; Vacluse; Ward No. 1; Ward No. 2; Wagener; Warrenville; White Pond; and Windsor.

1950 (46) 2414; 1954 (48) 1839.

Effect of amendment.—The amendment omitted "Ellenton" and added "New Ellenton".

§ 23-173. Same; in Fairfield County.

In *Fairfield* County there shall be the following voting precincts: Centerville; Feasterville; Mitford; Horeb; Monticello; Ridgeway; Winnsboro; Woodward; Longtown; Greenbrier; Lebanon; Jenkinsville; Winnsboro Mills Precinct No. 1; Winnsboro Mills Precinct No. 2; New Hope; Blairs; Shelton; Gladden Grove; Hickory Ridge; White Oak; Simpson; Blackstock; and Mossy Dale.

1950 (46) 2414; 1954 (48) 1553.

Effect of amendment.—The amendment omitted "Jackson Creek" and added "Lebanon".

§ 23-176. Same; in Greenville County.

In *Greenville* County there shall be the following voting precincts: American Spinning at or near school; Armstrong at or near school; Bates Old Field at or near McDaniel's Store; Batesville at or near Green's Store; Bellevue at Bellevue Grocery; Berea at Berea high school; Bessie at Charles' Store; Brandon at Boy Scout Hall; City View at City View Water office; Conestee at Conestee Hall; Duncan at Recreation Hall; East Dunklin at Knight's Store; East Gantt at East Gantt school; East View at East View school; Ebenezer-Welcome at Ebenezer-Welcome school; Fairview at the Stock Show Grounds; Flat Rock at Flat Rock school; Fork Shoals at Fork Shoals high school; Fountain Inn at the Library building; Fountain Inn Mill at the Mill Canteen; Gilreath's Store at Gilreath's store; Golden Grove at Freeman's store; Gowanville at Pitts' store; Ward 1 at the Fire Department at Greer City Hall building; Ward 2 at or near Bridwell's building on South Main St. in Greer; Ward 3 at C. & D. Chevrolet building in Greer; Ward 4 at Robinson's Pure Oil Station in Greer; Ward 5 at the high school building in Greer; Ward 6 at Hollifield's Studebaker building in Greer; Greer Mill at the Community Building; Highland at Highland school; Hillside at Hillside school; Hopewell at Hopewell school; Jennings Mill at Hart Valley Ranch; Jonesville at Jonesville school; Judson Mill at Judson school; Laurel Creek at Laurel Creek school; Leawood at Batson's Service Station;

Lebanon at Lebanon school; Lima at Lima school; Locust at Locust school; Mari-dell at Maridell school; Marietta at Marietta school; Mauldin at Mauldin school; Merrittsville at Poole's store; Mills Mill at The Mill; Mission at Mission school; Monaghan at the YMCA; Montague at Watkins store; Mt. Lebanon at Mt. Lebanon school; Mt. View at Mt. View school; Old Hundred at Old Hundred school; O'Neal at Few's store; Paris at Paris school; Paris Mountain at Paris Mountain Grocery store; Park Place at Park Place school; Piedmont at Beattie Hall; Piedmont Park at Paris school; Pike's store at Oak Grove school; Pleasant Grove at Pleasant Grove school; Poe Mill at Poe Mill school; Ready Fork at Moonville Mercantile Co.; Rehobeth at Rehobeth school; Rock Hill at Rock Hill schoolhouse; Reid's at Reid's schoolhouse; Sandy Flat at Sandy Flat schoolhouse; San Souci at Buncombe and Perry Roads; Simpsonville at Simpsonville high schoolhouse; Simpsonville Mill at Cole's store; Slater at the Mill; Southern Bleachery at Taylor's Drugstore; St. Albans at Thackston's store; Stewart's Academy at Stewart's Academy schoolhouse; Taylor's at Loftis Mercantile Co.; Tiger-ville at Wood's store; Travelers Rest at Coleman Motor Co.; Union Bleachery at Community Bldg.; Wares at Ridgeway's store; Welcome at Welcome school; West Dunklin at Cothran's store; West Gantt at West Gantt high school; West View at West View school; Westville at Westville school; Woodside at the Com-munity Bldg.; Woodville at Alberson's store; Ward 1 Box 1 at or near Sears Shelter, on East Park Avenue; Ward 1 Box 2 at or near Summitt Street School; Ward 1 Box 3 at or near Stone School; Ward 2 Box 1 at or near C & C Grocery Co., on East North Street; Ward 2 Box 2 at or near Leake Brothers Dairy on Laurens Road; Ward 2 Box 3 at or near the intersection of Highway Bypass 29 and Super Highway; Ward 3 Box 1 at or near Easterby Motor Company at West Washington and Hudson Streets; Ward 3 Box 2 at or near Greenville Auto Sales Co., Inc., at Church Street and East McBee Avenue; Ward 3 Box 3 at or near Graham School on Choice Street; Ward 4 Box 1 at or near Fire Station at Au-gusta Road and East Faris Road; Ward 4 Box 2 at or near Augusta Circle school; Ward 4 Box 3 at or near Payne's Dairy on the Augusta Road; Ward 4 Box 4 at or near Lewis Plaza or Campbell's Pharmacy; Ward 5 Box 1 at or near Fire Station at Pendleton Street and Markley Street; Ward 5 Box 2 at or near West Greenville Recreation Center; Ward 5 Box 3 at or near Poinsett Mill; Ward 5 Box 4 at or near Pendleton Street Drug Store near Willis Street; Ward 6 Box 1 at or near University Soda Shop on Cleveland Street; Ward 6 Box 2 at or near Collin's Motor Company on Augusta Street; Lenoah at or near Lenoah School; and Pleasant Hill at Pleasant Hill School.

1950 (46) 2414; 1951 (47) 96; 1952 (47) 2124; 1953 (48) 451.

Effect of amendments.—The 1952 amend-ment omitted Greer Box 1, Greer Box 2, Greer Box 3 and Greer Box 4 and added Ward 1, Ward 2, Ward 3, Ward 4, Ward 5 and Ward 6, in Greer. It also added Ward

3, Box 3, apparently in the city of Green-ville. And it changed the location of a few of the polling places. The 1953 amendment omitted Poinsett at Poinsett Mill and added a number of boxes in Greenville.

§ 23-179. Same; in Horry County.

* * * and Crescent Beach.

1950 (46) 2414; 1954 (48) 1532.

Effect of amendment.—Crescent Beach precinct added by the amendment. The sec-tion remains as it was with above addition.

§ 23-182. Same; in Lancaster County.

In *Lancaster* County there shall be the following voting precincts: Antioch; Bel-aire; Bell Town; Camp Creek; Carmel; Charlesboro; Chesterfield Avenue; Cren-shaw; Dixie; Douglas; Dwight; Elgin; Schoolhouse at Erwin Farm; Flat Creek; Flint Ridge; Fork Hill; Gooch's Cross Road; Haile Gold Mine; Heath Springs; Hyde Park; Jacksonham; Kershaw Mill; Kershaw; E. Lancaster; W. Lancaster; Linwood Drive; Midway; Oak Ridge; Osceola; New Bethel; Pleasant Hill; Pleas-

ant Valley; Primus; Rich Hill; Riverside; Springs Mill No. 1; Springs Mill No. 2; Tabernacle; Tank; Taxahaw; Tradesville; Union; Unity; Van Wyck; Welsh's; White Bluff; and Wylie Park.

1950 (46) 2414; 1954 (48) 1438.

Effect of amendment.—The amendment added "Schoolhouse at Erwin Farm".

§ 23-183. Same; in Laurens County.

In *Laurens* County there shall be the following precincts outside of the city of *Laurens*: Jones Store; Hopewell; Dials; Lanford; Woodville; Joanna; Mountville; Youngs; Poplar Springs; Waterloo; Hickory Tavern; Brewerton at the school building; Merna at Z. C. Reeves' store; Ekom; Gray Court; Cross Hill; Trinity Ridge; Barksdale-Narnie; Stewart's store; Cooks store at Bethany Schoolhouse; Clinton Mill; Clinton; Baileys; Daniel's store; Grays; Lydia Mill; Long Branch; Mt. Pleasant; Ora; Shady Grove; Tip Top; Mt. Olive at the school building; Watts Mills; Owings; Shiloh; Pleasant Mound; Princetown; and Renno. In the city of *Laurens* there shall be the following precincts: Ward No. 1, Ward No. 2, Ward No. 3, Ward No. 4, Ward No. 5 and Ward No. 6. Boxes for these city wards shall be located in the ward or within a radius of one hundred fifty yards of the county courthouse. Voters residing out of the city limits who formerly voted at the *Laurens* City precinct shall vote at Ward No. 1 precinct and said place for voting shall be in courthouse at *Laurens*. Voters who formerly voted at *Laurens* Mill precinct shall vote at Ward No. 3 precinct. Registration certificates issued for any former precincts shall be valid in the new precinct where the voter is entitled to vote and the managers of election shall endorse the new precinct on such certificate when the voter produces it for the purpose of voting.

1950 (46) 2414; 1953 (48) 191.

Effect of amendment.—The amendment omitted *Laurens* and *Laurens* Mill and added the last four sentences.

§ 23-185. Same; in Lexington County.

In *Lexington* County there shall be the following voting precincts: Batesburg; Boiling Springs; Boylston; Brook; Cayce; Chalk Hill; Chapin; Climax; Congaree; Crabs store; Cromer; Edmund; Fairview; Gaston; Gilbert; Hollow Creek; Hooks store; Irmo; Leesville; Lexington No. 1; Lexington No. 2; Mims; Newberg; Oak Grove; Pelion; Pine Ridge; Piney Wood's; Pool's Mill; Poplar Springs; Pond Branch; Red Bank; Ridge Road; St. Matthews; Samaria; Sandy Run; Sharpe's Hill; Steadman; Summit; Swansea; West Columbia Ward No. 1; West Columbia Ward No. 2; West Columbia Ward No. 3 and West Columbia Ward No. 4.

1950 (46) 2414, 2529; 1953 (48) 295; 1954 (48) 1563.

Effect of amendments.—The 1953 amendment omitted "West Columbia No. 1" and "West Columbia No. 2" and added the last four voting precincts.

The 1954 amendment changed "Lexington" to "Lexington No. 1", added "Lexington No. 2" and eliminated "Macedonia".

§ 23-186. Same; in McCormick County.

In *McCormick* County there shall be the following voting precincts: McCormick No. 1; McCormick No. 2; Mt. Carmel; Plum Branch; Talbert's store; Rehobeth; Wilmington; Clatworthy; Clarks Hill; Parksville; White Town; Bethany; Bell's store; Youngs; Bordeaux; and Modoc.

1950 (46) 2414; 1953 (48) 54.

Effect of amendment.—The amendment eliminated a voting precinct that was formerly at Lyons.

§ 23-191. Same; in Orangeburg County.

In *Orangeburg* County there shall be the following voting precincts: Ward I, Area west of Green and Church Streets and north of Russell Street; Ward

II, Area south of Russell Street and west of Middleton Street and Rowe Street; Ward III, Area north of Russell Street and east of Church and Green Streets; Ward IV, Area east of Middleton and Rowe Streets and south of Russell Street; Ward V, Area east of Southern Railway Track; Suburban No. 1; Suburban No. 2; Suburban No. 3, to include the area heretofore forming a part of Suburban No. 1 lying north of the present limits of the city of *Orangeburg* and west of the track of the Southern Railway Company, with voting place at or near Silcox's Store, which shall be separated from the Jamison precinct by the arc of a circle, the radius of which is two miles in length and the center of which is the center of the city of *Orangeburg*; Bethel; Bethlehem; Bolen; Bowman; North Branchville and South Branchville, the division line between which shall be the Charleston and Augusta Railway; Cattle Creek; Cow Castle; Cope; Dry Swamp; East Cow Castle; East Orange; Edisto; Elloree and West Elloree, the division between which shall be the Atlantic Coast Line Railroad track; Eutawville; Holly Hill No. 1 and Holly Hill No. 2, the division between which shall be U. S. Highway No. 176 beginning at Dean Swamp and following U. S. Highway No. 176 west through the Town of Holly Hill and to the junction with the Camden Road and then following the Camden Road north to township limits; Jamison; Limestone; Livingston; Middlepen; Neeses; Norway; North No. 1 and North No. 2, the division between which shall be the Seaboard Railroad right of way; Pine Hill; Providence; North Providence; Rowesville; Sawyerdale; Springfield No. 1, being the area south of State Highway No. 4 from Rocky Swamp Creek to the Aiken County Line; Springfield No. 2, being the area north of State Highway No. 4 from Rocky Swamp Creek to the Aiken County Line; Hillman; Trinity; Two Mile Swamp; Vance; Woodford and Zion.

1950 (46) 2414; 1952 (47) 2025; 1954 (48) 1730.

Effect of amendments.—The 1953 amendment added Suburban No. 3 as a new precinct.

"east" in describing area for ward IV in *Orangeburg* and further described area for Suburban No. 3.

The 1954 amendment changed "west" to

§ 23-193. Same; in Richland County.

In *Richland* County there shall be the following voting precincts: Arcadia; Arden; Ballentine; Bear Creek; Bellview; Blythewood; Brown's Chapel; College Place; Colonial Heights; Denny Terrace; Dentsville; Eastover; Eau Claire; Edgewood; Folk; Gadsden; Garner; Hampton; Holly Grove; Hopkins; Horrell Hill No. 1; Horrell Hill No. 2; Killian; Koon's Store; Lake View; Lykesland No. 1; Lykesland No. 2; Midway; Olympia; Pontiac No. 1; Pontiac No. 2; Ridgewood; Sligh; St. Andrews; Spring Hill; Summerville; Wayside; Columbia Ward No. 1; Columbia Ward No. 2; Columbia Ward No. 3; Columbia Ward No. 4; Columbia Ward No. 5; Columbia Ward No. 6; Columbia Ward No. 7; Columbia Ward No. 8; Columbia Ward No. 9; Columbia Ward No. 10; Columbia Ward No. 11; Columbia Ward No. 12; Columbia Ward No. 13; Columbia Ward No. 14; Columbia Ward No. 15; Columbia Ward No. 16; Columbia Ward No. 17; and Columbia Ward No. 18.

1950 (46) 2414; 1954 (48) 1558, 1781.

Effect of amendments.—The first amendment, 1954 p. 1558, transferred certain area from Koon's Store precinct to Killian precinct. See § 1 of said act for such area. The

second amendment 1954 p. 1781, changed "Lykesland" to "Lykesland No. 1", added "Lykesland No. 2" and omitted "Mill Creek".

§ 23-197. Same; in Union County.

In *Union* County there shall be the following voting precincts: Adamsburg; Black Rock; Bonham; Buffalo No. 1; Buffalo No. 2; Carlisle; Coleraine; Cross Keys; Excelsior Mill; Gibbs; Jonesville No. 1; Jonesville No. 2; Kelton; Lockhart No. 1; Lockhart No. 2; Meadows; Monarch No. 1; Monarch No. 2; Otteray; Parham; Putman; Santuc; Sedalia; Union Ward No. 1; Union Ward No.

2; Union Ward No. 3; Union Ward No. 4, Precinct No. 1; Union Ward 4, Precinct No. 2; West Springs; and Wilburn's Store.

1950 (46) 2414; 1951 (47) 361; 1953 (48) 140.

Effect of amendment.—The amendment added Bonham.

CHAPTER 4.

POLITICAL PARTIES, COMMITTEES, CONVENTIONS, NOMINATIONS OTHER THAN BY PRIMARIES, ETC.

Sec.

23-256. Meetings of Club.

23-258. County Committee.

23-259. County Conventions; time and delegations.

Sec.

23-262. State Conventions.

23-265.1. Same; special provisions for Richland County.

§ 23-256. Meetings of clubs.

The president and five members may call all special meetings of the club (except for reorganization, provided for in the succeeding paragraph) and at all special meetings one-tenth of the members shall be necessary to constitute a quorum for the transaction of business. At least forty-eight hours' public notice of all special meetings shall be given.

The clubs shall meet at the usual place of meeting at three o'clock P.M., on the fourth Saturday in February of each general election year for reorganization. But the county chairman may name any day, time and place within the same week for such club meeting by giving at least one week's notice by advertisement in one or more county papers. In case any existing club shall fail to reorganize on the day fixed the county chairman may fix a day for such club to meet for reorganization by giving two weeks' notice.

1950 (46) 2059; 1954 (48) 1447.

Effect of amendment.—The amendment changed "March" to "February" in first sentence of second paragraph.

§ 23-258. County committee.

The clubs in each county shall be held together and operate under the control of a county committee, which shall consist of one member from each club to be elected by the club. The committee, when elected, shall appoint its own officers (except the chairman, who shall be elected by the county convention) who shall not necessarily be members of the committee. A vacancy in the membership of the committee shall be filled by the club through the loss of whose member by death, resignation or otherwise the vacancy occurs, except that if the office of the county chairman shall become vacant by death, resignation or otherwise the committee may fill the vacancy by electing a chairman to serve until the organization of the next regular county convention. An officer of the county committee who is not a member of the committee shall not be entitled to vote on any question, except the chairman and then only in case of a tie vote. The tenure of office of the committee shall be until the first Monday in March in each general election year.

1950 (46) 2059, 2442; 1954 (48) 1447.

Effect of amendment.—The amendment changed "April" to "March" in last sentence.

§ 23-259. County conventions; time and delegates.

Every general election year county conventions shall be called by the county committee to meet on the first Monday in March at the county seat. The convention shall be composed of delegates elected from the clubs in the county, one delegate for every twenty-five members and major fraction thereof, based upon the number of votes polled in the first primary of the preceding general election year. The lists of

delegates certified to by the president and secretary of each club shall constitute the temporary roll of the county convention.

1950 (46) 2059; 1954 (48) 1447.

Effect of amendment.—The amendment changed “April” to “March” in first sentence.

§ 23-262. State convention.

The State convention shall meet at *Columbia* every general election year during March at a time fixed by the State Committee and announced publicly at least ten days before the meeting. The convention shall be composed of delegates elected by the county conventions, each county to be entitled to as many delegates as double the number of members in the General Assembly from the county. When the State convention assembles, it shall be called to order by the chairman of the State committee. A temporary president shall be nominated and elected by the convention and after its organization the convention shall proceed immediately to the election of permanent officers and to the transaction of business. When the business has concluded, it shall adjourn sine die, or may recess. But the State chairman may recall the State convention into special session at any time he deems wise.

The officers of the State convention shall be a president, vice-president, two secretaries and a treasurer. Each county delegation to a State convention may fill any vacancies therein. Any county failing or refusing to organize under the provisions of this Title shall not have representation in the State convention.

1950 (46) 2059; 1954 (48) 1447.

Effect of amendment.—The amendment omitted a fixed time for state conventions and authorized State Committee to fix

same. Change occurred only in first sentence.

§ 23-263. How candidates nominated.

Nomination contemplated under this title is the result of a primary, convention, executive committee action or petition, and

not of the general election. *Glasscock v. Bradford*, 218 S. C. 458, 63 S. C. (2d) 166 (1951).

§ 23-265.1. Same; special provisions for Richland County.

In *Richland* County every candidate in a municipal election, general, special or primary, shall make the following pledge and file it with the city clerk or comparable official of the municipality in which he is a candidate: “I, the undersigned, of the city or town of, county of Richland, State of South Carolina, candidate for the office of, hereby pledge that I will not give money or use intoxicating liquors for the purpose of obtaining or influencing votes and that I shall, at the conclusion of the campaign and before the election, render to the city clerk (or comparable official), under oath, an itemized statement of all moneys spent or provided by me during the campaign for campaign purposes up to that time; and I further pledge that I will immediately after the election render an itemized statement, under oath, showing all further moneys spent or provided by me in said election.”

A failure to comply with this provision shall render such election null and void, in so far as concerns the candidate who fails to file the statement herein required, but shall not affect the validity of the election of any candidate complying with this section. Such itemized statement and pledge shall be open to public inspection at all times. Any violation of the provisions of the pledge required in this section shall be a misdemeanor and any person, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or be imprisoned at hard labor for not less than one month nor more than six months, or both such fine and imprisonment, in the discretion of the court.

1952 (47) 1712.

CHAPTER 5.

CONDUCT OF ELECTIONS.

Article 3.

Provisions Applicable Only in Primary Elections.

Sec.

23-376. Managers of Primaries.

Sec.

23-372. Primary election nomination of candidates.

ARTICLE 1.

*Provisions Applicable to General and Special Elections Only.***§ 23-303. When general election for certain county officers held.**

Cross reference.—As to election of sheriff in Kershaw County, see § 53-52 and the note thereto. Applied in *Brown v. Moseley*, 222 S. C. 1, 71 S. E. (2d) 591 (1952).

§ 23-313. Candidates nominated by petition.

Applied in *Glasscock v. Bradford*, 218 S. C. 458, 63 S. E. (2d) 166 (1951).

§ 23-318. Form of ballot when questions are submitted.

Cited in *Bolt v. Cobb*, ... S. C., 82 S. E. (2d) 789 (1954).

§ 23-324. Write-ins to be in voter's handwriting.

Rubber stamp may not be used in casting a write-in ballot. Atty. Gen. Op., Sept. 9, 1954.

ARTICLE 3.

*Provisions Applicable Only in Primary Elections.***§ 23-372. Primary election nomination of candidates.**

In the event that a party shall nominate candidates by party primary election, a party primary election shall be held by such party on the second Tuesday in June of each general election year and a second and third primary election each two weeks successively thereafter, if necessary. The entries for those wishing to offer for nomination in such party primary for a statewide, congressional or district office which includes more than one county shall open at noon on the day after the day the State convention convenes and close at noon two weeks thereafter and the entries for those wishing to offer for nomination in such party primary for a countywide or less than countywide office shall open at noon on the day the county convention convenes and close at noon two weeks thereafter. If, after the closing of the time for filing pledges, there be not more than two candidates for any one office and one or more of such candidates dies or withdraws, the State or county committee, as the case may be, may, in its discretion, afford opportunity for the entry of other candidates for the office involved.

1950 (46) 2059; 1954 (48) 1447.

Effect of amendment.—The amendment changed "July" in first sentence to "June".

§ 23-376. Managers of primaries.

The county committee shall meet on or before the second Monday in May of each general election year and appoint the managers for the primaries. Three managers shall be appointed for each voting place and a clerk or clerks shall also be appointed for such voting places as the various county committees may determine. Three additional managers may be appointed for any polling place at which seven hundred and fifty or more registered electors are entitled to vote. The names

of all managers and clerks shall be published in one or more county newspapers at least two weeks before the election.

1950 (46) 2059, 2442; 1954 (48) 1447.

Effect of amendment.—The amendment changed “June” in first sentence to “May”.

CHAPTER 61.

VOTING BY MEMBERS OF ARMED FORCES, ETC.

Sec.	Sec.
23-441. Definitions.	23-441.12. Registration board to transmit list of registrants to commissioners of election.
23-441.1. Construction of chapter.	23-441.13. Mailing ballots to registrants.
23-441.2. Who eligible to vote under chapter.	23-441.14. Envelopes containing ballots; printing on face and back.
23-441.3. Secretary of State to furnish registration cards; contents.	23-441.15. Marking of ballot by registrant; mailing.
23-441.4. Requests for registration cards; mailing cards.	23-441.16. Oath to be returned with ballot.
23-441.5. Record of cards, data, etc.; duplicate cards.	23-441.17. Commissioners to transmit envelope to managers of election; deposit in ballot box; further procedure.
23-441.6. Execution and return of card.	23-441.18. Absentee balloting in primary and special elections.
23-441.7. Registration after return of card.	23-441.19. County committees to act in primary elections.
23-441.8. Application for ballot; action thereon.	23-441.20. Responsibility of political parties.
23-441.9. Registration valid for calendar year.	23-441.21. Secretary of State to carry out chapter and distribute forms.
23-441.10. No registration after books closed.	
23-441.11. Preservation and destruction of records.	

§ 23-441. Definitions.

As used in this chapter:

(1) The term “*members of the Armed Forces of the United States*” means members of the United States Army, the United States Navy, the United States Marine Corps, the United States Air Force, the United States Coast Guard or any of their respective components;

(2) The term “*members of the Merchant Marine of the United States*” means all officers and men in the employment of the United States Maritime Service who are engaged on ships registered under the flag of the United States, except those persons employed on ships that are licensed for duty on the Great Lakes or the inland waterways of the United States; and

(3) The term “*registration card*” means the card described in § 23-441.3.

1953 (48) 423.

§ 23-441.1. Construction of chapter.

This chapter shall be liberally construed in order to effectuate its purpose.

1953 (48) 423.

§ 23-441.2. Who eligible to vote under chapter.

Every individual specified in the succeeding paragraph of this section who is absent from the place of his voting residence, but otherwise eligible to register and qualified to vote in any general election in the State, shall be entitled to vote in elections in accordance with the provisions of this chapter.

The following individuals, if otherwise eligible under the preceding paragraph of this section, shall be entitled to vote in accordance with the provisions of this chapter:

(1) Members of the Armed Forces of the United States;

(2) Members of the Merchant Marine of the United States;

(3) Persons serving with the American Red Cross or with the United Service Organizations who are attached to and serving with the Armed Forces of the United States outside of the counties of their respective residences; and

(4) Members or employees of any department of the United States government serving overseas.

1953 (48) 423.

§ 23-441.3. Secretary of State to furnish registration cards; contents.

Not later than six months nor earlier than eight months before each general election the Secretary of State shall have printed and shall furnish the board of registration of each county an adequate number of registration cards in the following form, substituting in each case the appropriate calendar year for which the cards are printed:

SERVICE ABSENTEE REGISTRATION FOR THE GENERAL
ELECTION TO BE HELD, 19...

..... County No.

READ CAREFULLY THE INSTRUCTIONS PRINTED ON THE
REVERSE SIDE HEREOF BEFORE FILLING IN THIS
CARD.

I hereby swear (or affirm) that:

- (1) My full name is
- (2) I am a citizen of the United States and of the State of South Carolina;
- (3) The date of my birth was
- (4) As of, 19..., my home residence will have been in South Carolina for two years, in county for one year and in the precinct in which I am applying to be registered and in which I shall offer to vote for four months;
- (5) I am not disqualified from voting because of a conviction of a criminal offense;
- (6) I am (check appropriate blank)
 - (A) in the Armed Forces of the United States () ;
 - (B) in the Merchant Marine of the United States () ;
 - (C) serving with the American Red Cross () or with the United Service Organizations () attached to and serving with the Armed Forces of the United States outside of the county of my residence in South Carolina;
 - (D) a member () employee () of the Department of the United States Government serving overseas;
- (7) My home address is; and
- (8) My service address is

I request that I be registered so that I may vote in the elections to be held during this calendar year for which I am qualified.

.....
Signature of Applicant

Sworn to and subscribed before me this day of, 19 ..

.....
Officer Authorized to Administer Oath

.....
Title of Officer

On the back of each card shall be printed the following:

INSTRUCTIONS—This registration card must be filled out and returned, in the envelope accompanying it, to your county board of registration. All entries except your signature should be printed or typewritten.

You are required to sign the card in the presence of an officer authorized to administer oaths. The following officers are authorized to administer the oath required on this registration card: a notary public of any state of the United

States; United States Consuls; your commanding officer; and other officers authorized by law to administer oaths.

Conviction of any of the following crimes disqualifies you from registering and voting: burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegenation, larceny and any crime against the election laws. Such disqualification may be removed only by the pardon of the Governor.

Your registration by this card, if granted by your county board of registration, is valid only for the elections to be held during this calendar year. For elections which are held in subsequent calendar years you must be registered again.

IN ORDER TO BE REGISTERED THIS CARD MUST REACH YOUR
COUNTY BOARD OF REGISTRATION NOT LATER THAN
THIRTY DAYS BEFORE THE ELECTION.

1953 (48) 423.

§ 23-441.4. Requests for registration cards; mailing cards.

Any person specified in § 23-441.2 or any relative or friend of such person may at any time request from the board of registration of the county of the residence of such person specified in § 23-441.2 a registration card and, in making such request, shall furnish the name and home address and service mailing address of such person. Application for an election ballot on any form provided members of the Armed Forces and members of the Merchant Marine by the Federal government shall be considered as a request for a registration card and the Secretary of State shall forward all such applications received by him to the board of registration of the proper county. Upon receipt of a request the board of registration shall immediately mail a registration card, together with a return addressed envelope, to such person specified in § 23-441.2 at the service mailing address given; but no registration card shall be mailed when it is obvious that there will not be sufficient time for the card to reach the person and be returned to the board of registration before the registration books are closed.

1953 (48) 423.

§ 23-441.5. Record of cards, data, etc.; duplicate cards.

The board of registration shall number each registration card and keep a record book in which shall be recorded the number of the card, the name, home address and service mailing address of the person for whom the registration card is requested, the name, address and relation, if any, of the person requesting the card, the date upon which the card is requested and the date upon which the card is mailed. For good cause the board may furnish a duplicate registration card, noting the fact in the record book.

1953 (48) 423.

§ 23-441.6. Execution and return of card.

The person to whom the registration card is mailed shall complete the card and sign it before a notary public of any state of the United States, a United States Consul, his commanding officer or any officer authorized by law to administer oaths. The card shall then be mailed to the proper board of registration in the return addressed envelope accompanying the registration card. Upon the return of each registration card to the board, the board shall stamp or write thereon the date of its receipt.

1953 (48) 423.

§ 23-441.7. Registration after return of card.

Upon the return of the registration card, properly completed and signed, to the board, the board shall consider the information upon the card and any other

information that it may have or obtain concerning the applicant and judge his legal qualifications for registration. If he is found to be entitled to registration, the board shall enter his name in the registration book for his voting precinct, noting after his name the words "Service Absentee Registration", the number of the registration card and the year for which the registration is valid. Such entry shall constitute the registration of the applicant.

1953 (48) 423.

§ 23-441.8. Application for ballot; action thereon.

Any person serving in the Armed Forces may submit to any registration board of this State (either direct or through the Secretary of State) a request for a ballot along with a sworn statement that he is serving in a capacity as defined in § 23-441.2, giving the name and location of his precinct and, if possible, the number of his registration certificate. The registration board shall promptly, upon receipt of any such request, verify the facts stated in the sworn statement against the permanent records and if it is found that the applicant is registered shall file his request as if it were a registration card as provided in § 23-441.4. If no record of such applicant's registration is found such board shall immediately forward to such applicant a registration card as provided in § 23-441.4. In the case of any such person found to be so registered the board of registration shall insure his receipt of a ballot as herein provided for those receiving registration under the provisions of this chapter.

1953 (48) 423.

§ 23-441.9. Registration valid for calendar year.

Each registration under the provisions of this chapter shall be valid only for the calendar year in which it is granted and shall allow the registrant to vote during that year only in any general, special or primary election.

1953 (48) 423.

§ 23-441.10. No registration after books closed.

Nothing in this chapter shall be construed as allowing registration under the provisions of this chapter after the registration books have been closed as required by § 23-66 of the 1952 Code and by § 11, Article II of the Constitution of South Carolina, 1895.

1953 (48) 423.

§ 23-441.11. Preservation and destruction of records.

Each county board of registration shall preserve the record book required to be kept by § 23-441.5 and the registration cards of all applicants for registration until the end of the calendar year and until the time for contesting the elections shall have expired, at which time they shall be destroyed. But if any contest concerning the elections is then pending the record book and the cards shall not be destroyed until the final determination of the contest.

1953 (48) 423.

§ 23-441.12. Registration board to transmit list of registrants to commissioners of election.

Immediately upon the closing of the registration books thirty days before each election the board of registration of each county shall transmit to the commissioners of election of the county or to the county committee for each political party of the county which makes a request therefor a list of the names of the persons who are registered for the particular election in the manner provided in § 23-441.7, together with their respective service mailing addresses, their respective voting precincts and the numbers of their respective registration cards.

1953 (48) 423.

§ 23-441.13. Mailing ballots to registrants.

Upon receipt of the list of names, the county committee or the commissioners of election shall, as soon as the ballots to be used in the election are delivered to them, mail, in one envelope, the following items to each registrant at his service address:

- (1) One of each ballot to be used in the election;
- (2) A copy of the oath set forth in § 23-441.16;
- (3) Printed instructions as to the marking, folding and return of each ballot and as to the signing and return of the oath;
- (4) A return addressed envelope for the return of the ballots and the oath to the commissioners of election; and
- (5) Any additional oath, instructions or information necessary to enable such registrant to execute and return a ballot legally acceptable by the officials charged with conducting such election.

1953 (48) 423.

§ 23-441.14. Envelopes containing ballots; printing on face and back.

The return addressed envelope required by paragraph (4) of § 23-441.13 to be sent each registrant shall have printed on its face in the upper left hand corner the words "Service Absentee Ballot For Precinct" and shall be addressed to the Commissioners of Election of County, (*County Seat*), South Carolina. All blanks on the face of the envelope shall be filled in by the commissioners of election prior to the mailing of the ballot to the registrant. On the back shall appear blanks which the voter shall fill in with his name and address. The envelope shall be of such thickness as to make it impossible to read any of its contents without opening the envelope. When the ballot is for use in a primary election the return addressed envelope referred to herein and in § 23-441.13 shall be changed appropriately to insure its return to the proper county committee.

1953 (48) 423.

§ 23-441.15. Marking of ballot by registrant; mailing.

Upon receipt of the ballot or ballots the registrant shall mark each ballot on which he wishes to vote, fold it so that its contents cannot be distinguished without unfolding it and mail it in compliance with the instructions received by him with the ballot. Enclosed with the ballot or ballots shall be the oath set forth in § 23-441.16. No ballot shall be counted unless the oath is properly signed and enclosed therewith nor shall any ballot be counted which is received by the commissioners of election too late for proper delivery to the managers of election as required by § 23-441.17 and the printed instructions required by paragraph (3) of § 23-441.13 to be sent each registrant shall notify him that his vote will not be counted in either of these events.

1953 (48) 423.

§ 23-441.16. Oath to be returned with ballot.

The oath, a copy of which is required by paragraph (2) of § 23-441.13 to be sent each registrant and which is required by § 23-441.15 to be returned with the registrant's ballot, shall be signed by the registrant before a notary public of any state of the United States, a United States Consul, his commanding officer or any officer authorized by law to administer oaths. The oath shall be in the following form:

I hereby swear (or affirm) that I am duly qualified to vote at this election according to the Constitution of the State of South Carolina; that I have not voted

during this election; and that the ballot or ballots with which this oath is enclosed is my ballot.

.....
Signature of Voter
Sworn to and subscribed before me this day of, 19...
.....
Officer Authorized to Administer Oath
.....
Title of Officer

1953 (48) 423.

§ 23-441.17. Commissioners to transmit envelope to managers of election; deposit in ballot box; further procedure.

Upon receipt of the envelope containing the ballot or ballots of the registrant and his oath the commissioners of election shall transmit the envelope, unopened, to the managers of election for the election precinct of the registrant. The managers shall keep the envelope in a safe place, unopened, until the day of election. On the day of the election the managers shall determine from the books of registration the eligibility of the registrant in question to vote and, if he is properly registered for the current election and otherwise qualified, the managers shall, without unfolding or examining his ballot or ballots, deposit each ballot in the appropriate ballot box. One of the managers shall write the registrant's name on the poll list and note thereafter the words "Absentee Service Voter." The envelopes in which the ballots are received and the oaths enclosed therein shall be preserved by the managers of election and transmitted to the commissioners of election as a part of their election returns. The managers shall receive from the commissioners, until the hours for closing the polls, all envelopes and ballots of persons voting under the provisions of this chapter. All ballot envelopes received by the commissioners too late for proper delivery to the managers shall be endorsed with the day and hour of receipt and shall be retained by the commissioners until the time for contesting the election shall have expired, at which time they shall be destroyed without examination. When any ballot cast under the provisions of this chapter is challenged, such ballot shall not be deposited in the ballot box, but shall be kept, with its envelope, separate, and transmitted by the managers to the commissioners so that its validity may be determined by the commissioners.

1953 (48) 423.

§ 23-441.18. Absentee balloting in primary and special elections.

Absentee balloting in primary and special elections shall be in accordance with regulations of the political party or political subdivision conducting any such election. Boards of registration and all other election officials of this State shall cooperate with such authorities to the end that the right to vote may be preserved for all persons, members of or serving with the Armed Forces as defined in § 23-441.

1953 (48) 423.

§ 23-441.19. County committees to act in primary elections.

In conducting primary elections county committees shall perform the duties generally required in this chapter of commissioners of election.

1953 (48) 423.

§ 23-441.20. Responsibility of political parties.

Any political party conducting a primary in this State is responsible for carrying out the provisions of this chapter by making ballots and election material available so that the persons named in § 23-441.2 may be enabled to vote in primary elections subject to the rules and regulations of such political party. All expenses

incurred by any political party in conducting elections subject to the provisions of this chapter shall be borne by such political party.

1953 (48) 423.

§ 23-441.21. Secretary of State to carry out chapter and distribute forms.

The Secretary of State shall be responsible for carrying out the provisions of this chapter. He shall have printed and distributed all forms that are required to effectuate these purposes:

(1) To make it possible for all persons mentioned in § 23-441.2 to register; and

(2) To make it possible for all such registrants to vote in general and special elections only. To this extent only all expenses incurred in the administration of this chapter shall be paid for by the State.

1953 (48) 423.

CHAPTER 8.

SPECIAL PROVISIONS FOR FEDERAL ELECTIONS.

§ 23-564. Duties of State officials.

Editor's note.—"§ 24-564", appearing in the catchline and folio line in the original, should read "§ 23-564."

Title 24.

Electricity.

Chap. 1. Regulation of Electrical Utilities, § 24-86.

CHAPTER 1.

REGULATION OF ELECTRICAL UTILITIES.

Article 5.

Issue of Securities.

Sec.

24-86. Sale of stock to employees.

ARTICLE 3.

Rates.

§ 24-32. Schedule of rates to be filed.

Cited in *United Merchants & Manufacturers v. South Carolina Elec., etc., Co.*, 113 F. Supp. 257 (1953).

§ 24-35. Investigation and change of existing rates.

Cited in *United Merchants & Manufacturers v. South Carolina Elec., etc., Co.*, 113 F. Supp. 257 (1953).

ARTICLE 4.

Extensions and Abandonment or Transfer of Property.

§§ 24-73 to 24-75. Procedure for acquisition of plant by municipality.

Editor's note.—See §§ 25-161 to 25-171 which may possibly be deemed to have superseded §§ 24-73 to 24-75.

ARTICLE 5.

Issue of Securities.

§ 24-81. Issue of securities.

This article is obviously a regulatory measure designed for the protection of the public interest. *South Carolina Elec., etc., Co. v. Pinckney*, 217 S. C. 407, 60 S. E. (2d) 851 (1950).

It is only a restriction on the power of a utility to issue securities and compliance with its terms cannot be said to be an act done in the creation of the debt evidenced by the securities issued, so as to

render securities signed, sealed and delivered in another state subject to the South Carolina documentary tax. South Carolina Elec., etc., Co. v. Pinckney, 217 S. C. 407, 60 S. E. (2d) 851 (1950).

§ 24-85. Sales of securities by or to employees.

Cross reference.—For permissible sales to employees, see § 24-86.

§ 24-86. Sale of stock to employees.

Operating electrical utility companies may offer to their employees opportunities to purchase their securities and may permit deductions from their wages or salaries to be applied on the payment of such purchases. But such offers shall permit only bona fide voluntary action on the part of the employees and shall in no way require or coerce any employee into entering into or subscribing to any such plan.

1953 (48) 312.

ARTICLE 7.

Other Powers of Commission.

§ 24-112. Rules and regulations.

Cited in United Merchants & Manufacturers v. South Carolina Elec., etc., Co., 113 F. Supp. 257 (1953).

CHAPTER 4.

STATE RURAL ELECTRIFICATION AUTHORITY ACT.

§ 24-301. Short title.

Cited in Bookhart v. Central Elec. Power Cooperative, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

Title 25.

Eminent Domain.

Chap. 3. Public Works Eminent Domain Law, § 25-139.

5. Condemnation by Municipalities, §§ 25-161 to 25-171.

CHAPTER 1.

GENERAL PROVISIONS.

§ 25-1. "Owner," etc., includes mortgagee; parties.

Cited in Welling v. Clinton Newberry Natural Gas Authority, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

CHAPTER 2.

STATE AUTHORITIES EMINENT DOMAIN ACT.

§ 25-51. Short title.

Cited in Welling v. Clinton Newberry Natural Gas Authority, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

§ 25-52. "State authority" defined; additional rights of eminent domain.

Stated in Cain v. South Carolina Public Service Authority, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

§ 25-53. Property condemn; estate and area acquire; control; repurchase certain lands; acquire water and flowage rights in lands in vicinity of project.

Proviso giving landowner right to repurchase qualifies right of eminent domain.—The proviso in this section giving to the landowner the right to repurchase under certain specified circumstances was intended to limit or qualify the right of eminent domain granted by this chapter and constitutes a condition annexed thereto. *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

And should be liberally construed.—The repurchase provision should receive a liberal construction in favor of the landowner. *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

It extends to the heirs and devisees of the owner.—The right of repurchase granted by this section extends to the heirs or devisees of the person who was the owner at the time the property was condemned. *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

The word "and" preceding the word "unless" in the repurchase proviso should be construed to mean "or." Thus the proviso permits the owner to repurchase any portion of the land condemned not occupied for one of the purposes specified in the proviso or covered with water. *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

The word "structures" as used in the

repurchase proviso must be subjected to the well-established rule of *ejusdem generis* restricting its interpretation to structures of the general character of or at least substantially related in use and operation to dams and dikes. It was not intended to include every building which may be used by the authority for a corporate purpose. *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

The right of repurchase exists although the land is being used and occupied in furtherance of the purpose for which the authority was established, of such purpose is not one specified in the proviso relating to repurchase. *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

The use of a tract during World War II by an anti-sabotage patrol to protect the dams and power house from destruction and its present use for experiments in health control cannot be classified as "protecting said dams, dikes and structures" within the meaning of the repurchase proviso in this section. *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

Land sought to be repurchased held not to be within 100 feet of the "maximum high water mark" of the impounded water. *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

§ 25-54. Notify owners; "owners" defined; include several parcels of lands, etc., in one proceeding; render award of compensation separately.

Applied in *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

§ 25-62. Cumulative.

Stated in *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

CHAPTER 3.

PUBLIC WORKS EMINENT DOMAIN LAW.

Sec.

23-139. Chapter inapplicable in certain counties.

§ 25-101. Short title.

Cited in *Welling v. Clinton Newberry Natural Gas Authority*, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

§ 25-139. Chapter inapplicable in certain counties.

The provisions of this chapter shall not apply to the counties of *Chesterfield, Dillon, Greenwood, Horry, Jasper, Laurens, Lexington and Saluda*.

1952 Code § 9152; 1936 (39) 1268; 1944 (43) 1253; 1953 (48) 475.

Effect of amendment.—The amendment eliminated Cherokee County from the counties named in the section.

CHAPTER 5.

CONDEMNATION BY MUNICIPALITIES.

Sec.	Sec.
25-161. Procedure prescribed to apply to all municipal condemnations.	25-167. Deposit of award; municipality may proceed with project.
25-162. Notice to landowners; selection of freeholders to assess damages.	25-168. Court to determine appeal; trial de novo.
25-163. Failure of landowner to select freeholders, etc.	25-169. Final judgment; execution and recordation of deed.
25-164. Selection of fifth freeholder should four fail to agree.	25-170. Service of papers.
25-165. What freeholders to consider.	25-171. Condemnation not limited to county.
25-166. Award; appeal to court of common pleas.	

§ 25-161. Procedure prescribed to apply to all municipal condemnations.

Whenever any municipal corporation within this State desires to become the owner of any real estate or to acquire any easement or right-of-way through, over or across such real estate for any corporate or public purpose for which a municipality may condemn real estate or an interest therein, the procedure prescribed herein shall be exclusive.

1953 (48) 272.

§ 25-162. Notice to landowners; selection of freeholders to assess damages.

Any such municipality through its city council or governing body shall select two freeholders and so notify the landowner or owners (as defined in § 25-1) in writing of the two so selected and deliver therewith a general description of the real estate to be condemned and the purpose for which the real estate is to be used. Within five days after receipt of such notice the landowner or owners shall likewise select two freeholders and the four so chosen shall forthwith select a fifth freeholder. The words "landowner" or "owners" as used in this sentence of this chapter shall mean the actual owner or owners of the real estate as distinguished from the definition thereof contained in § 25-1. The five so selected, before fixing the value thereof or assessing any damages which may be due the landowner or owners, shall be sworn to do impartial justice between said municipality and said landowner or owners.

1953 (48) 272.

§ 25-163. Failure of landowner to select freeholders, etc.

Should the landowner or owners fail or refuse to select two freeholders within the time provided herein, then the clerk of court of the county in which the real estate is located shall select two freeholders and the four so selected shall select a fifth and they shall have the same power and perform the same duties as are conferred on the five freeholders in § 25-162.

1953 (48) 272.

§ 25-164. Selection of fifth freeholder should four fail to agree.

Should the four freeholders selected under § 25-162 or § 25-163 within five days after their selection fail to agree on the fifth freeholder, then the clerk of court of the county in which the real estate is located shall select the fifth freeholder.

1953 (48) 272.

§ 25-165. What freeholders to consider.

The freeholders in making their award shall consider the value of the real estate or the damages which may accrue to the landowner or owners and take into consideration any benefits which may accrue to the landowner or owners because of the use of or improvements to be placed upon such real estate by the municipality.

1953 (48) 272.

§ 25-166. Award; appeal to court of common pleas.

The freeholders, after having been selected and duly sworn to do impartial justice between all interested parties, shall make their award in writing should they find the landowner or owners entitled to any damages and file the award with the clerk of court in the county where the real estate is located. A copy of the award shall be served on the landowner or owners and they shall have ten days in which to serve their notice of intention to appeal to the court of common pleas in the event they are not satisfied with the award. The municipality shall have the same right to appeal from the award of the freeholders as is herein accorded the landowner or owners.

1953 (48) 272.

§ 25-167. Deposit of award; municipality may proceed with project.

Should the landowner or owners serve notice of intention to appeal from the award of the freeholders, the municipality may deposit the amount of the award with the clerk of court of the county where the real estate is located and the municipality may forthwith take the real estate or any interest therein condemned and proceed with its proposed work or project. In the event the freeholders make no award in favor of the landowner or owners and they appeal from such award, the municipality shall likewise have the same right to proceed with its work or project.

1953 (48) 272.

§ 25-168. Court to determine appeal; trial de novo.

The municipality or the landowner or owners may have the appeal determined in the court of common pleas for the county in which the real estate is located as expeditiously as possible and the appeal shall enjoy the same preferred status on the trial roster as an appeal under condemnation by the State Highway Department. The issues on appeal shall be tried de novo before a jury and the appellant shall be the actor. By agreement a jury trial may be waived.

1953 (48) 272.

§ 25-169. Final judgment; execution and recordation of deed.

When any final judgment shall be obtained either by the award of the freeholders or the order of any court, the landowner or owners shall execute a deed to the municipality for the real estate or the interest therein condemned. If such landowner or owners shall fail or neglect to so do, the clerk of the court of common pleas of the county in which the real estate is located shall, after the final judgment is entered in his office and the amount of the award or verdict of the jury is paid into his office, execute a deed for the property condemned or the interest therein to such municipality without warranty. Such deed after having been executed and delivered either by the landowner or owners or the clerk of court shall be recorded in the office where deeds are recorded in the county where the real estate is located.

1953 (48) 272.

§ 25-170. Service of paper.

The same procedure shall be followed in serving any notice or paper required herein as is followed for the service of a summons in a civil action.

1953 (48) 272.

§ 25-171. Condemnation not limited to county.

The right of condemnation by a municipality shall not be limited to the county in which the municipality is located.

1953 (48) 272.

Title 26.**Evidence.**

- Chap. 1. General Provisions, §§ 26-7.1., 26-7.2.
 8. Examination of Witnesses by Commission, § 26-604.

CHAPTER 1.**GENERAL PROVISIONS.**

Sec.
 26-7.1. Examination of witness in criminal proceeding concerning written statement made to public employee.

Sec.
 26-7.2. Admissibility of such statement in evidence.

§ 26.3. Pleading not evidence against accused.

Applied in *State v. Smith*, 220 S. C. 224, 67 S. E. (2d) 82 (1951).

§ 26-7. Proof of negligence by plaintiff in motor vehicle cases.

Quoted in *Chapman v. Associated Transport, Inc.*, 218 S. C. 554, 63 S. E. (2d) 465 (1951).

§ 26-7.1. Examination of witness in criminal proceeding concerning written statement made to public employee.

No witness in any preliminary hearing or in any criminal judicial proceeding of any kind or nature shall be examined or cross-examined by any examiner, solicitor, lawyer or prosecuting officer concerning a written statement formerly made and given to any person employed by the State or any county, city or municipality thereof, or any part of any such governing body, unless it first be shown that at the time of the making of the statement the witness was given an exact copy of the statement and that before his examination or cross-examination the witness was given a copy of the statement and allowed a reasonable time in which to read it.

1952 (47) 1977.

Cited in *State v. Anderson*, 224 S. C. 419, 79 S. E. (2d) 453 (1954).

§ 26-7.2. Admissibility of such statement in evidence.

Unless the provisions of §§ 1-64 and 26-7.1 have been complied with, no such statement shall be admissible in evidence in any case, nor shall any reference be made to it in the trial of any case.

1952 (47) 1977.

This section adds nothing to the duties imposed on investigating officers by § 1-64. It simply declares that the result or noncompliance with its terms shall be the exclusion of such statement from evidence. The applicability of the rule of exclusion laid down by this section is limited to a statement to which the requirements of § 1-64 apply, for it is only as to "such (a) statement" that noncompliance is possible. *State v. Anderson*, 224 S. C. 419, 79 S. E. (2d) 455 (1954).

Statement signed before § 1-64 became law admissible.—When the State offered

in evidence appellant's written statement, which he had signed for police officers, his counsel objected to its admission upon the ground that the provisions of § 1-64 had not been complied with, in that the officers who took the statement did not give a copy thereof to appellant or obtain his receipt therefor. This objection was properly overruled upon the ground that these requirements did not apply to the statement, which was signed some five months before this section and § 1-64 became law. *State v. Anderson*, 224 S. C. 419, 79 S. E. (2d) 455 (1954).

§ 26-12. Mortuary table.

Applied in *Greene v. Miller*, 114 F. Supp. 150 (1953).

CHAPTER 2.

PROOF OF ORDINANCES, LAWS, ETC.

ARTICLE 1.

Ordinances and Foreign Laws Generally.

§ 26-51. Proof of ordinances of municipalities.

Cited in Webb v. Southern Ry. Co., 221 S. C. 450, 71 S. E. (2d) 12 (1952).

§ 26-27. No evidence of foreign law unless pleaded.

Applied in Seale Motor Co. v. Stone, 218 S. C. 373, 62 S. E. (2d) 824, 25 A. L. R. (2d) 1118 (1950).

CHAPTER 3.

PUBLIC DOCUMENTS, RECORDS AND CERTAIN BOOKS, ETC.

ARTICLE 1.

Public Documents.

§ 26-101. When certified copies or certified photostatic copies of documents admissible.

Cross references.—As to brand or ear-mark certificate as prima facie evidence of ownership, see § 6-379. As to certificate of Secretary of State as evidence of registration of trade-mark, see § 66-186. As to reference to reports of highway accidents, findings of Highway Department, etc., see §§ 46-328.1, 46-737.
Cited in Goudelock v. Prudential Ins. Co., 219 S. C. 284, 65 S. E. (2d) 114 (1951); State v. Pearson, 223 S. C. 337, 76 S. E. (2d) 151 (1953).

CHAPTER 4.

COMPELLING ATTENDANCE OF WITNESSES.

§ 26-307. Request by this State for witness from reciprocating state.

Editor's note.—There should be only one "of record" on next to last line of this section.

CHAPTER 6.

COMPETENCY OF WITNESSES.

§ 26-402. Exceptions to rule of § 26-401.

II. WHO DISQUALIFIED.

B. Person Whose Interest Is Affected.

Test of interest of a witness.

A witness is disqualified only when there is a possibility that his interest may be affected by the direct legal operation and effect of the judgment. McLauchlin v. Gressette, 224 S. C. 296, 79 S. E. (2d) 149 (1953).

III. WHEN DISQUALIFIED.

B. Testimony Must Be against One of Designated Classes of Persons.

Illustrations.

In an action to enjoin obstruction of a road, defendant was not precluded by this section from testifying as to an agreement with a deceased former owner of

plaintiff's land, where such former owner was not plaintiff's immediate grantor, but merely one of his predecessors in title. Taylor v. Cox, 218 S. C. 488, 63 S. E. (2d) 470 (1951).

V. PLEADING AND PRACTICE.

Testimony incompetent under this section is admissible, etc.

The established general rule requiring reservation of objections in cross-examination is particularly applicable with reference to this section, for the testimony thereby excluded would otherwise be competent, and therefore one relying on this statute must make sufficient and timely objections. Brevard v. Fortune, 221 S. C. 117, 69 S. E. (2d) 355 (1952).

§ 26-403. Husband or wife of party competent witness; exception.

Cross reference.—See §§ 20-361 and 20-362 as to testimony of husband and wife under Uniform Reciprocal Enforcement of support act.

§ 26-405. Testimony of defendant in criminal cases.

In the absence of request therefor, trial judge committed no error in failing to charge that failure of defendant to take stand and testify should not be considered against him and that no inference of guilt should be implied therefrom. *State v. Ful-*

ler, Westbrook Advance Sheets, No. 16899, filed Aug. 4, 1954.

Quoted in *State v. Cox*, 221 S. C. 1, 68 S. E. (2d) 624 (1951), dis. op. of Baker, C. J.

§ 26-408. Self-incrimination.

Subpoena must be honored.—Protection afforded against self incrimination may not be injected to invalidate court's order to appear or subpoena merely because of possibility that witness may be asked some

question answer to which might tend to incriminate him. *Greenwood Lumber Co. v. Cromer*, ... S. C., 82 S. E. (2d) 527 (1954).

CHAPTER 7.

EXAMINATION OF ADVERSE WITNESSES; INSPECTION OF PAPERS, ETC.

§ 26-502. Inspection and copy of books, etc.

Section inapplicable where document allegedly surrendered to party invoking section.—This section, empowering the court to give either party to an action the right to inspect and copy books, papers and documents in the possession of the

other, has no application where it is alleged in the complaint that the document mentioned has been surrendered to the defendants, who seek to invoke the section. *Williams v. Southern Life Ins. Co.*, 224 S. C. 415, S. E. (2d) 365 (1953).

§ 26-503. Examination of adversary before trial.

Examination not allowed to prove whether facts are as alleged.—It is improper to grant an examination of plaintiff for the purpose of seeking to discover the evidence on which the plaintiff bases his cause of action. An examination of a

party is not allowed to prove whether or not facts are as alleged. *Williams v. Southern Life Ins. Co.*, 224 S. C. 415, S. E. (2d) 365 (1953).

Applied in *Norris v. Bryant*, 217 S. C. 389, 60 S. E. (2d) 844 (1950).

CHAPTER 8.

EXAMINATION OF WITNESSES BY COMMISSION.

Sec.
26-604. Testimony of officers of State Hospital and similar institutions

taken by commission in civil causes.

§ 26-604. Testimony of officers of State Hospital and similar institutions taken by commission in civil causes.

Whenever the testimony of any officer at a State Hospital or any similar institution shall be required in a court of justice, in a civil cause, it may be taken by commission and the personal appearance of such officer shall not be required, unless it is made to appear to the court, by affidavit, that justice cannot otherwise be done.

1942 Code § 696; 1932 Code § 696; Civ. P. '22 § 712; Civ. C. '12 § 3975; Civ. '02 § 2871; G. S. 2203; R. S. 2335; 1829 (6) 382; 1952 (47) 2042.

Effect of amendment.—The amendment added the phrase "or any similar institution."

CHAPTER 9.

EXAMINATION OF WITNESSES BY DEPOSITION.

§ 26-701. Depositions taken by clerks of court; right of viva voce examination.

Applied in *Johnson v. Brandon Corp.*, 221 S. C. 160, 69 S. E. (2d) 594 (1952).

§ 26-709. Disposition of deposition.

Substantial compliance in safeguarding deposition sufficient.—Where envelope transmitting deposition did not show sender to be a notary public nor that envelope contained a deposition, but by agreement of parties it was to be taken by

him and mailed to special referee, and there was no contention that deposition had been tampered with, there was substantial compliance with statutory requirements and deposition admissible. *Adams v. Willis*, ... S. C. ... , 83 S. E. (2d) 171 (1954).

Title 27.**Fees and Costs.**

- Chap. 2. Clerks of Court and Registers of Mesne Conveyances, §§ 27-81 to 27-92.
 3. Masters, §§ 27-203.1 to 27-209.
 4. Probate Judges, § 27-319.1.
 5. Sheriffs, Magistrates and Constables, § 27-422.
 6. Miscellaneous Officials, §§ 27-501 to 27-501.1.
 7. Witnesses, § 27-604.
 8. Miscellaneous Local Provisions, § 27-701.

CHAPTER 2.**CLERKS OF COURT AND REGISTERS OF MESNE CONVEYANCES.**

- | | |
|--|---|
| Sec. | Sec. |
| 27-81. Special provisions for Dillon County. | 27-84.1. Special provisions for court costs in Jasper County. |
| 27-83.1. Special provision for Horry County. | 27-92. Special provisions for Orangeburg County. |

§ 27-52. Same; provisions for certain counties.

Editor's note.—A. & J. R. 1952 (47) number of counties covered by this section. See § 27-701.

§ 27-62. Same; exception in certain counties.

Editor's note.—A. & J. R. 1952 (47) number of counties covered by this section. See § 27-701.

§ 27-81. Special provisions for Dillon County.

Amended by A. & J. R. 1953 (48) 46.

§ 27-83.1. Special provision for Horry County.

Provisions of A. & J. R. 1953 (48) 67 make up this section.

§ 27-84.1. Special provisions for court costs in Jasper County.

Provisions of A. & J. R. 1953 (48) 8 make up this section.

§ 27-92. Special provisions for Orangeburg County.

* * * and (iii) for recording and indexing any filed chattel mortgage, seventy-five cents.

1942 Code § 4933; 1932 Code § 4933; Civ. C. '22 §§ 5731, 5740; Civ. C. '12 § 4213; 4220; Civ. C. '02 §§ 3104, 3110; 1894 (21) 990, 993; 1954 (48) 1468.

Effect of amendment.—The amendment added item (iii) above. The remainder of the section unchanged and is effective.

§ 27-98. Special Provisions for Sumter County.

Cross reference.—For fee of clerk of court for recording transfer of real estate through estates, see § 27-319.1.

CHAPTER 3.

MASTERS.

- Sec. 27-203.1. Same; exceptions for Chesterfield County.
 Sec. 27-209. Same; exceptions for Spartanburg County.
 27-205. [Repealed.]

§ 27-203.1. Same; exceptions for Chesterfield County.

In *Chesterfield* County the master shall receive a fee of ten dollars per day for holding references and five dollars for each report made and filed, in addition to the other fees prescribed in § 27-201.

1952 (47) 1882.

§ 27-205. Same; special provisions in Horry County.

Repealed by A. & J. R. 1952 (47) 2156.

Cross reference.—See now § 27-701.

§ 27-209. Same; exceptions for Spartanburg County.

Provisions of A. & J. R. 1953 (48) 269 make up this section.

CHAPTER 4.

PROBATE JUDGES.

- Sec. 27-319.1. Transfer of estate realty in Sumter County.

§ 27-304. Special provisions for certain counties.

Cross reference.—For fee of probate judge to make description of estate realty transfers for clerk of court, see § 27-319.1.

§ 27-319.1. Transfers of estate realty in Sumter County.

Provisions of A. & J. R. 1954 (48) 1798 make up this section.

§ 27-320. No fee for search, York County.

Editor's note.—Similar provision in § 14-3625.

CHAPTER 5.

SHERIFFS, MAGISTRATES AND CONSTABLES.

ARTICLE 2.

Magistrates and Constables and Worthless Check Cases in Certain Counties.

Article 2.

Magistrates and Constables and Worthless Check Cases in Certain Counties.

- Sec. 27-422. Fees in worthless check cases in certain counties.

§ 27-422. Fees in worthless check cases in certain counties.

* * * (2) In *Barnwell*, *Cherokee*, *Edgefield*, *Florence*, *Hampton*, *Horry*, *Lee* and *Sumter* Counties, magistrates one dollar and constables or sheriff (except that no such charge shall be made by the sheriff in *Hampton* County) two dollars and mileage as provided in item (10) of § 27-451.

1942 Code § 3718-1; 1932 Code § 1549; Cr. C. '22 § 496; Cr. C. '12 § 569; Cr. C. '02 § 412; R. S. 327; 1887 (19) 800, 1142; 1927 (35) 371; 1928 (35) 1157, 1233; 1929 (36) 3, 34, 50, 105; 1930 (36) 1142; 1931 (37) 250; 1933 (38) 57; 1937 (40) 464; 1938 (40) 1547; 1950 (46) 2215; 1954 (48) 1467.

Effect of amendment.—The amendment remainder of the section remains unchanged and effective.
 added Edgefield County to item (2). The

ARTICLE 4.

*Constables.***§ 27-451. Fees and commissions of constables generally.**

Applied in *McKown v. Daniel*, 217 S. C. 510, 61 S. E. (2d) 163 (1950).

§ 27-454. County to deduct from constables' salaries amounts paid in certain cases.

Applied in *McKown v. Daniel*, 217 S. C. 510, 61 S. E. (2d) 163 (1950).

CHAPTER 6.

Miscellaneous Officials.

Sec.

27-501. Secretary of State.

Sec.

27-501.1. Same; copying documents.

§ 27-501. Secretary of State.

* * *

(4) For recording any writing, nine cents for every copy sheet containing ninety words;

* * *

1942 Code § 4922; 1932 Code § 4922; Civ. C. '22 § 5727; Civ. C. '12 § 4210; Civ. C. '02 § 3101; G. S. 2430; R. S. 2454; 1790 (5) 153; 1799 (5) 355; 1901 (23) 754; 1954 (48) 1566.

Effect of amendment.—The amendment other provisions of this section remain uneliminated "or copying" in item (4). The changed and effective.

§ 27-501.1. Same; copying documents.

The Secretary of State shall charge the following fees for copies of documents furnished by his office:

- (1) Certificate under seal, one dollar;
 - (2) Certified copy of charter, two dollars;
 - (3) Certified copy of land grant, one dollar sixty cents;
 - (4) Certified copy of plat, tracing, first four corners, one dollar, and five cents per additional corner, plus one dollar for certifying;
 - (5) Copying, per page, thirty-five cents; and
 - (6) Certified copy of any record, one dollar sixty cents.
- 1954 (48) 1566.

CHAPTER 7.

WITNESSES.

Article 1.

General Provisions.

Sec.

27-604. [Repealed.]

ARTICLE 1.

*General Provisions.***§ 27-604. Pay of witness in Horry County.**

Repealed by A. & J. R. 1952 (47) 2156.

Cross reference.—See now § 27-701.

CHAPTER 8.

MISCELLANEOUS LOCAL PROVISIONS.

Article 1.**Horry County.**

Sec.

27-701. Costs and fees generally.

ARTICLE 1.

*Horry County.***§ 27-701. Costs and fees generally.**

Provisions of § 1, A. & J. R. 1952 (47) 2156 make up this section.

Title 28.**Fish, Game, etc.**

- Chap. 1. General Provisions, §§ 28-2.1 to 28-47.
2. South Carolina Wildlife Resources Department, §§ 28-81 to 28-141.
3. Commercial Fisheries Administrative Provisions, §§ 28-151 to 28-179.
4. Atlantic States Marine Fisheries Commission, § 28-201.
6. Protection of Game, §§ 28-300 to 28-525.
7. Protection of Fish, etc., §§ 28-552.1 to 28-721.
8. Coastal Fisheries Law, §§ 28-757 to 28-989.
9. Special Provisions for Certain Counties or Areas, §§ 28-1001 to 28-1258.

CHAPTER 1.

GENERAL PROVISIONS.

Article 1.**Miscellaneous Provisions.**

Sec.

28-2.1. Wild birds, wild game and fish property of State.

28-3. [Repealed.]

28-5. Game zones.

28-5.1. Application of game laws to zones.

28-6. [Repealed.]

28-7. Peace officers to assist in enforcement of fish and game laws.

28-8.1 Unlawful to fish or hunt on banks of navigable stream without permission.

28-8.2. Sale of game or fish unlawfully caught, killed, etc.

28-8.3. Violations of any provision of Title unlawful.

28-8.4. General penalties.

28-9 to 28-11. [Repealed.]

28-12.1. Disposition of fees, fines and forfeitures.

28-13 to 28-17. [Repealed.]

Article 2.**Certain Exemptions from License Requirements.**

28-31. [Repealed.]

Sec.

28-31.1. Orphans in eleemosynary institutions.

28-31.2. Certain residents over sixty-five years old.

28-32 to 28-34. [Repealed.]

28-34.1. Youth under twelve.

Article 3.**Relations with Federal Government; Certain State-Owned Lands.**

28-40. Consent to Congress making rules and regulations.

28-40.1. Agreements with United States respecting wildlife of national forest lands.

28-40.2. Powers of Division of Game over such lands.

28-40.3. Penalties.

28-40.4. Application of sections to other lands.

28-40.5. Funds from certain agreement to be used on Santee-Cooper lands.

28-40.6. Assent to act of Congress providing aid in wildlife projects, etc.

28-41 to 28-47. [Repealed.]

ARTICLE 1.

*Miscellaneous Provisions.***§ 28-2.1. Wild birds, wild game and fish property of State.**

All wild birds, wild game and fish, except fish in strictly private ponds and lakes entirely segregated from other waters, are the property of the State.
1952 (47) 2179.

§ 28-3. Wild birds, wild game and fish property of State.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-2.1.

§ 28-5. Game zones.

The State is hereby divided for the purpose of game into seven zones.

(1) The first zone shall comprise the counties of *Greenville, Oconee* and *Pickens*.

(2) The second zone shall comprise the counties of *Abbeville, Anderson, Edgefield, Greenwood, Laurens, McCormick, Newberry* and *Saluda*.

(3) The third zone shall comprise the counties of *Aiken, Calhoun, Lexington* and *Richland*.

(4) The fourth zone shall comprise the counties of *Cherokee, Chester, Fairfield, Spartanburg, Union* and *York*.

(5) The fifth zone shall comprise the counties of *Chesterfield, Clarendon, Darlington, Florence, Kershaw, Lancaster, Lee, Marlboro* and *Sumter*.

(6) The sixth zone shall comprise the counties of *Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Charleston, Colleton, Dorchester, Hampton, Jasper, Orangeburg* and *Williamsburg*.

(7) The seventh zone shall comprise the counties of *Dillon, Georgetown, Horry* and *Marion*.

1942 Code §1756; 1937 (40) 286; 1938 (40) 1743; 1939 (41) 469; 1951 (47) 226; 1953 (48) 139, 326; 1954 (48) 1429, 1450.

Effect of amendment.—Williamsburg zone 2, 1953 (48) 329; Florence County transferred from game zone 7 to game zone 5, 1954 p. 139; Edgefield and Saluda Counties from game zone 3 to game zone 4 to game zone 5, 1954 p. 1450.

§ 28-5.1. Application of game laws to zones.

All laws of this State now in force affecting game shall, until changed, apply to all the zones in the State.

1952 (47) 2179.

§ 28-6. Laws remaining in force in Game Zone No. 7.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-7. Peace officers to assist in enforcement of fish and game laws.

All sheriffs, deputy sheriffs, constables, rural policemen and special officers shall actively cooperate with the South Carolina Wildlife Resources Department in the enforcement of the game and fish laws of the State.

1942 Code § 1765; 1932 Code § 1756; Cr. C. '22 § 739; 1919 (31) 269; 1952 (47) 2890.

Effect of amendment.—The amendment sources Department" for "game department substituted "South Carolina Wildlife Re- ment and game wardens."

§ 28-8. Hunting, fishing, etc., without consent on lands of others.

Cross reference.—See § 16-387 also for provisions prohibiting hunting, fishing, etc. on lands of another without permission.

§ 28-8.1. Unlawful to fish or hunt on banks of navigable stream without permission.

It shall be unlawful to fish or hunt from the banks of a navigable stream without the permission of the owner of the land and such permit must be in writing should the owner not be within one mile of the place where the person may be caught in the act of so fishing or hunting.

1952 (47) 2179.

§ 28-8.2. Sale of game or fish unlawfully caught, killed, etc.

Any bird, non-migratory fish or animal caught, taken or killed, shipped or received for shipment or had in possession or under control by any person contrary to the provisions of law, which may come into the possession of the game wardens, shall be sold at auction within the State or shall be given to some charitable institution within the State. In the event of sale, the game warden disposing of such bird, non-migratory fish or animal shall issue a certificate to the purchaser, certifying that such bird, non-migratory fish or animal is legally possessed by the purchaser and any one so acquiring such bird, non-migratory fish or animal, within this State, may use it as if it had been originally sold, killed or possessed in accordance with the laws of this State. The money received from the sale of such confiscated birds, non-migratory fish or game shall be forwarded by the game warden to the State Treasurer and placed to the account of the game protection fund.

1952 (47) 2179.

Game warden should not purchase at his own sale except in cases of absolute necessity. Atty. Gen. Op., Nov. 24, 1953.

§ 28-8.3. Violations of any provision of Title unlawful.

It shall be unlawful for anyone to catch, kill, possess or transport, or to attempt to catch, kill, possess or transport, any bird or animal or part thereof in violation of any of the provisions of the fish and game laws.

1952 (47) 2179.

§ 28-8.4. General penalties.

When not otherwise specified, the violation of any part of the game, bird or fish laws of this State shall be a misdemeanor and, upon conviction thereof, the offender shall suffer the penalty of fine of not less than twenty-five dollars nor more than one hundred dollars or imprisonment for not less than ten days nor more than thirty days.

1952 (47) 2179.

§§ 28-9 to 28-11. Sale of game or fish illegally caught; penalties for violating provisions of Title.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-8.2 to 28-8.4.

§ 28-12.1. Disposition of fees, fines and forfeitures.

Revenues from all license fees, fines and forfeitures under any game or fish law, including § 28-480, shall, except as otherwise directed herein, be transmitted to the Director to be placed to the credit of the game protection fund of the State Treasury and shall be disbursed by the Director by warrants drawn on the State Treasurer. All balances in said fund shall be carried forward each year so that no part thereof shall revert to the general fund of the State. All fines shall be expended for game and fish propagation in the counties in which they are collected.

1952 (47) 2179.

§§ 28-13 to 28-17. Disposition of fines, license fees, etc., generally and in certain counties.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-12.1.

ARTICLE 2.*Certain Exemptions from License Requirements.***§ 28-31. Temporary exemption of World War II veterans.**

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-31.1. Orphans in eleemosynary institutions.

All orphans of any orphanage or other eleemosynary institution of this State may hunt or fish within any county of this State without obtaining a license to do so if the superintendent or person in charge of such orphanage or eleemosynary institution shall first apply to the Director for a permit allowing such orphans to hunt or fish, giving the names of the orphans and the name of the institution and if such superintendent or person in charge of such orphans shall be the holder of a State hunting license and/or fishing license if required and shall accompany such orphans on the hunt or fishing excursion for which the permit is granted. The Director may issue such permit when the above conditions have been complied with.

1952 (47) 2179.

§ 28-31.2. Certain residents over sixty-five years old.

Any person who has been a resident of the State for at least three years and who has attained the age of sixty-five years may secure a license to hunt and fish within any county of this State without cost upon presentation of sufficient evidence to any game warden that he has been a resident for such period and has attained the age of sixty-five years.

1952 (47) 2179.

§§ 28-32 to 28-34. Orphans in eleemosynary institutions, residents over sixty-five and youths under fourteen.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-31.1, 28-31.2.

§ 28-34.1. Youth under twelve.

No child under twelve years of age shall be required to procure a hunting or fishing license or any other permit or license required for hunting or fishing.

1954 (48) 1765.

The provision as to a child under twelve years of age construed to apply to non-resident child. Atty. Gen. Op., Apr. 5, 1954.

ARTICLE 3.*Relations with Federal Government; Certain State-Owned Lands.***§ 28-40. Consent to Congress making rules and regulations.**

The consent of the General Assembly is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the Federal government shall determine to be needful in respect to game animals, game birds, non-game birds and fish on such lands and waters in the State as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March 1, 1911, entitled "An Act to Enable any State to Cooperate with any other State or States, or with the United States for the Protection of the Watersheds of Navigable Streams and to Appoint a Commission for the Acquisition of Lands for the Purpose of Conserving the Navigability of Navigable Rivers" (36 United States Statutes at Large, page 961) and acts of Congress supplementary thereto and amendatory thereof. (Acts 1922, p. 106.)

1952 (47) 2179.

§ 28-40.1. Agreements with United States respecting wildlife of national forest lands.

The South Carolina Wildlife Resources Department may enter into a cooperative agreement with the United States Government, or with the proper authorities thereof, for the protection and management of the wildlife resources of the national forest lands within the State and for the restocking of such lands with desirable species of game, birds and other animals and fish.

1952 (47) 2179.

§ 28-40.2. Powers of Division of Game over such lands.

The Director of the Division of Game of the State may close all hunting and fishing within such lands so contracted for with the Federal Government for such period of time as may, in the opinion of the Director, be necessary. He may from time to time prescribe the season for hunting and fishing therein, fix the amount of fees required for special hunting and fishing licenses and issue such licenses, prescribe the number of animals and game, fish and birds that may be taken therefrom and the size thereof and prescribe the conditions under which the same may be taken.

1952 (47) 2179.

§ 28-40.3. Penalties.

Any person violating any of the rules so promulgated by the Director or who shall hunt or fish upon such lands at any time, other than those times specified by the Director, shall, upon conviction therefor, be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned for not less than ten days nor more than thirty days for each and every offense.

1952 (47) 2179.

§ 28-40.4. Application of sections to other lands.

The provisions of §§ 28-40 to 28-40.5 shall also apply (a) to other properties of the United States government, (b) to any other properties acquired or to be acquired from the United States government by the State or (c) to any other lands or waters purchased by the United States or this State. But hunting and fishing shall not be allowed on any lands under the control or ownership of the State Commission of Forestry except by written agreement with that Commission.

Nothing herein contained shall interfere in any manner with the use and management of lands by a State agency in charge of such lands in the functions of such agency as authorized by law.

1952 (47) 2179.

§ 28-40.5. Funds from certain agreement to be used on Santee-Cooper lands.

All money collected by the South Carolina Wildlife Resources Department on the Santee-Cooper area under the provisions of an agreement between the United States Wildlife Service and the Department in accordance with § 28-40.1, or collected under any act of the General Assembly pertaining to such area, shall be placed by the Department with the State Treasurer to the credit of the Santee-Cooper project to be disbursed by the Department for game and fish protection and propagation on the Santee-Cooper lands and waters or as otherwise provided by any such act.

1952 (47) 2179.

§ 28-40.6. Assent to act of Congress providing aid in wildlife projects, etc.

The State of South Carolina hereby assents to the provisions of the Act of Congress entitled "An Act to Provide that the United States shall Aid the States in Wildlife Restoration Projects, and for Other Purposes," approved September 2, 1937 (Public No. 415, 75th Congress), and acts supplementary thereto or amendatory thereof, and the Department shall perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and with rules and regulations promulgated by the Secretary of Agriculture thereunder. No funds accruing to the State from license fees paid by hunters shall be diverted for any other purpose than the administration of the Department.

1952 (47) 2179.

§§ 28-41 to 28-47. Relations with Federal government; certain State-owned lands.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-40 to 28-40.6.

CHAPTER 2.

SOUTH CAROLINA WILDLIFE RESOURCES DEPARTMENT

Article 1.

South Carolina Wildlife Resources Commission.

Sec.

28-81. Number of members and appointment.

28-82. Term and vacancies.

28-83. Chairman.

28-84. Compensation.

28-85. Commission to act through Division of Game and Division of Commercial Fisheries.

28-86. Division of Game.

28-87. Director of Division of Game.

28-88. Division of Commercial Fisheries.

28-89. Director of Division of Commercial Fisheries.

28-90. Vacancies in positions of Directors.

28-91. Commercial Fisheries Advisory Board; appointment and term.

28-92. Compensation of members of Advisory Board.

28-93. Hearings by and actions against Advisory Board.

28-94. Board to advise Director of Division of Commercial Fisheries.

Sec.

28-101 to 28-104. [Repealed.]

28-105. Investigations; reports; recommendations.

28-105.1. Same; game and fish cultural operations; sampling fish populations.

28-111. [Repealed.]

28-112. Supervision over law enforcement.

28-113 to 28-115. [Repealed.]

Article 2.

Game Wardens.

28-121. Appointment and removal.

28-122 to 28-134. [Repealed.]

28-134.1. Commissions of wardens.

28-134.2. Oath and bond.

28-134.3. Powers of wardens State-wide.

28-136.1. Duty to obtain information of violations.

28-137, 28-138. [Repealed.]

28-140.1. Search for and seize fish and game possessed unlawfully.

28-141. Division of Game may acquire rights of way to certain waters for the public.

ARTICLE 1.

South Carolina Wildlife Resources Commission.

§ 28-81. Number of members and appointment.

The head and governing board of the South Carolina Wildlife Resources Department shall be a commission to be known as the South Carolina Wildlife Resources Commission, which shall be composed of seven members, one from each congressional district in the State, and one at large. They shall be appointed by the Governor, by and with the advice and consent of the Senate.

1952 (47) 1692, 2890.

§ 28-82. Term and vacancies.

Two of the original appointees were appointed for terms of office of two years, two for terms of office of four years and three for terms of office of six years. Their successors shall be appointed in like manner for terms of office of six years and until their successors shall have been appointed and qualified. All vacancies on the commission shall be filled for the unexpired term in the manner of original appointment.

1952 (47) 1692, 2890.

§ 28-83. Chairman.

One of the members shall be designated by the Governor to serve as chairman.
1952 (47) 1692.

§ 28-84. Compensation.

Each member shall receive compensation in the amount of one hundred dollars per annum and official expenses as provided by law for State employees on public business.

1952 (47) 1692, 2890.

§ 28-85. Commission to act through Division of Game and Division of Commercial Fisheries.

All of the functions, duties, powers and authority of the South Carolina Wildlife Resources Commission shall be performed, exercised and discharged in and through two divisions, the Division of Game (embracing the work and functions of the conservation of game and the execution and enforcement of the regulatory, tax and license laws of the State relating to birds, non-migratory fish and game and to fishing, other than commercial fishing, shell fish, shrimp, oysters, oyster leases and fisheries) and the Division of Commercial Fisheries (embracing the work and functions of the conservation of oysters, shrimp, shell fish, fisheries and all fish taken in commercial fishing, in fostering and developing industries in relation thereto and in the execution and enforcement of the regulatory, license and tax laws of the State relating to commercial fishing, shell fish, shrimp, oysters, oyster leases and fisheries.)

1952 (47) 2890.

§ 28-86. Division of Game.

The Division of Game shall consist of a Director and such clerical, stenographic, technical, field and enforcement employees as may be necessary, to be employed by the Director with the approval of the Commission.

1952 (47) 2890.

§ 28-87. Director of Division of Game.

The Director of the Division of Game shall be employed on and after July 1 1954 by the Commission for such term and compensation, not greater than the term and compensation provided by law for the Chief Game Warden as of June 30 1954, as shall be fixed by the Commission in its judgment.

1952 (47) 2890.

§ 28-88. Division of Commercial Fisheries.

The Division of Commercial Fisheries shall consist of a Director and such clerical, stenographic, technical, field and enforcement employees as may be necessary, to be employed by the Director with the approval of the Commission, and also a Commercial Fisheries Advisory Board.

1952 (47) 2890.

§ 28-89. Director of Division of Commercial Fisheries.

The Director of the Division of Commercial Fisheries shall be a person who, by education, training and experience, is versed in the conservation of the oyster, shell fish, shrimp and commercial fishing resources of the State and is qualified to foster the development of the oyster, shell fish, shrimp and commercial fisheries industry of the State and to supervise the enforcement of the conservation, regulatory, license and tax laws of the State relating to oyster, shell fish, shrimp and commercial fishing and fisheries. He shall be employed by the Commission for such term and compensation as shall be fixed by the Commission with the approval of the State Budget and Control Board.

1952 (47) 2890.

§ 28-90. Vacancies in positions of Directors.

Any vacancy in the position of Director of either division shall be filled by employment by the Commission in the manner of original employment.

1952 (47) 2890.

§ 28-91. Commercial Fisheries Advisory Board; appointment and term.

The Commercial Fisheries Advisory Board shall consist of three members possessing knowledge of oysters, shell fish, shrimp and commercial fishing, both from a conservation and a commercial standpoint, who shall be appointed by the Governor and shall be residents of coastal counties which have a substantial commercial fisheries industry, no two of whom shall be residents of the same county. The first appointees were appointed for terms of one, two and three years, respectively, and their successors shall be appointed for terms of three years each.

1952 (47) 2890.

§ 28-92. Compensation of members of Advisory Board.

The compensation of the members of the Advisory Board shall be a per diem of ten dollars for each day of attendance at meetings of the Board in the performance of its functions hereunder and the members thereof shall also receive official expenses as provided by law for State employees while engaged in public business.

1952 (47) 2890.

§ 28-93. Hearings by and actions against Advisory Board.

The Advisory Board shall hold the hearings and shall exercise the hearing and determination powers and functions exercised by law prior to January 16 1952 by the State Board of Fisheries in all matters relating to oysters, oyster leases, shell fish, shrimp and commercial fishing, with appeals to the courts from the determinations and decisions of the Board in such matters as appeals were then provided for by law from determinations and decisions of the State Board of Fisheries. Any actions which might then have been maintained at law or in equity against the State Board of Fisheries shall lie against the Board as to all matters in reference to which functions are given to the Board hereunder.

1952 (47) 2890.

§ 28-94. Board to advise Director of Division of Commercial Fisheries.

The Board shall also act as an advisory board to the Director of the Division of Commercial Fisheries on such matters as he may refer to it.

1952 (47) 2890.

§§ 28-101 to 28-104. State Game and Fish Commission.

Repealed by A. & J. R. 1952 (47) 2890.

Cross reference.—See now § 28-81 et seq.

§ 28-105. Investigations; reports; recommendations.

The Department shall continuously investigate the game and fish conditions of the State and the laws relating thereto. It shall annually make report of its activities to the General Assembly and recommend legislation and other action by the General Assembly in its judgment conducive to the conservation of wildlife.

1942 Code § 1755; 1935 (39) 478; 1952 (47) 2890.

Effect of amendment.—These duties, now formed by the State Game and Fish Commission, now abolished. devolved upon the South Carolina Wildlife Resources Department, were formerly per-

§ 28-105.1. Same; game and fish cultural operations; sampling fish populations.

The authorized agents of the Department may conduct game and fish cultural operations and scientific investigations in such manner, places and at such times as are considered necessary, and to use whatever methods are deemed advisable for sampling fish populations. Such operations and investigations shall be conducted only at the request of and with the permission from the Director of the Division of Game and Fish or the Director of the Division of Commercial Fisheries. No such operations and investigations shall be made upon private lands and waters except at the request of the owner thereof.

1954 (48) 1765.

§ 28-111. Election, term, oath and bond.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-112. Supervision over law enforcement.

The Commission shall exercise supervision over the enforcement of the laws of the State, regulatory, tax, license or otherwise, in reference to birds, nonmigratory fish, game fish, shell fish, shrimp, oysters, oyster leases and fisheries.

1942 Code § 1751; 1932 Code § 3285; Cr. C. '22 § 764; Cr. C. '12 § 747; 1910 (26) 575; 1919 (31) 101; 1920 (31) 809; 1930 (36) 1219; 1952 (47) 2890.

Effect of amendment.—The duties now devolved upon the Commission were formerly imposed upon the Chief Game Warden.

This section not repealed by Reorganization Plan No. 8 (47 Stat. 2890) but duties devolved upon Wildlife Resources Commission. Atty. Gen. Op., June 5, 1954.

§§ 28-113 to 28-115. Chief Game Warden.

Repealed by A. & J. R. 1952 (47) 2890.

ARTICLE 2.*Game Wardens.***§ 28-121. Appointment and removal.**

The Governor shall appoint, with the approval of the Wildlife Resources Commission from time to time, bird, nonmigratory fish and game wardens, whose terms of office shall be for two years and until their successors are appointed. The Governor shall issue a commission to each person appointed as a game warden and shall transmit such commission to the office of the clerk of court for the county in which such bird, nonmigratory fish and game warden is resident. No tax or fee shall be charged or collected for such commission. Any of such wardens may be removed by the Governor upon proof satisfactory to him that they are not fit persons for such positions.

1942 Code § 1752; 1932 Code § 3286; Cr. C. '22 § 765; Cr. C. '12 § 748; 1907 (25) 662; 1920 (31) 809; 1922 (32) 763; 1928 (35) 1195; 1930 (36) 1219; 1934 (38) 1210; 1935 (39) 378; 1939 (41) 170; 1944 (43) 2316; 1947 (45) 320; 1952 (47) 2890.

Effect of amendment.—The amendment requires the appointment to be based on the recommendation of the Wildlife Resources Commission instead of the several legislative delegations.

This section not repealed by Reorganization Plan No. 8 (47 Stat. 2890) but power of legislative delegations devolved upon Wildlife Resources Commission. Atty. Gen.

Op., June 5, 1954.

There are no statutory provisions for appointment of non-pay wardens, but they have been a part of the game warden force for years and Legislature has given their appointment tacit consent. Such wardens, however, should be appointed for definite two-year term. Atty. Gen. Op., June 5, 1954.

§§ 28-122 to 28-134. County game wardens.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-134.1. Commissions of wardens.

The Secretary of State shall transmit to the Director of the Division of Game the commissions of all game wardens and the Director shall deliver the commissions to the game wardens only after they have filed oaths and bonds as provided in § 28-134.2.

1952 (47) 2179.

§ 28-134.2. Oath and bond.

Every game warden appointed to protect the property of the State shall, before entering upon the duties of his office, take and subscribe, before a notary public or other officer authorized to administer an oath, an oath to perform the duties of the office and shall execute a bond with some reliable surety company approved by the Director of the Division of Game in the sum of one thousand dollars for the faithful discharge of his duties. The bond and oath shall be transmitted to the of-

fice of the Director who shall properly record the bond and oath and keep them on file in his office.

1952 (47) 2179.

§ 28-134.3. Powers of wardens State-wide.

The warden so qualified shall have State-wide authority for the enforcement of all fish and game laws.

1952 (47) 2179.

§ 28-136.1. Duty to obtain information of violations.

All game wardens shall obtain information as to all violations of the bird, non-migratory fish and game laws and shall check all bag limits, and the size and specie of such birds, nonmigratory fish and game.

1952 (47) 2179.

§§ 28-137, 28-138. Game wardens in Colleton and Pickens Counties.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-140.1. Search for and seize fish and game possessed unlawfully.

A duly commissioned game warden, upon making an affidavit before a magistrate or in any court of the State that there exist reasonable grounds to believe that birds, fish or game are in possession of any person or any common carrier in violation of the law, may procure a search warrant and open, enter and examine all cars, warehouses and receptacles of common carriers in the State where they have reason to believe any game or fish taken or held in violation of law is and, when any such game or fish are found, may seize the same.

1952 (47) 2179.

§ 28-141. Division of Game may acquire rights of way to certain waters for the public.

The Division of Game may contract with owners of land contiguous to the Catawba River and its tributaries for rights of ingress and egress to such waters over and upon such lands for the use of the public who wish to go lawfully upon said stream and waters. Such rights of way shall be leased for such terms as the land-owners and the Division of Game shall agree upon and compensation for them, if need be, may be paid from the game fund of York County. The purpose of this provision is to make sure that the public have reasonable access to the waters above referred to.

1951 (47) 76; 1952 (47) 2890.

Effect of amendment.—The powers now vested in the Division of Game were formerly vested in the Game Department of York County, now abolished.

CHAPTER 3.

COMMERCIAL FISHERIES ADMINISTRATIVE PROVISIONS.

Sec.	Sec.
28-151 to 28-158. [Repealed.]	28-170. Duties of inspectors; power of arrest.
28-159. Jurisdiction of Division of Commercial Fisheries.	28-171. [Repealed.]
28-160. Division to enforce laws.	28-172. Authority of inspectors.
28-161. Collection of revenues.	28-173. [Repealed.]
28-162. Experimental propagation of shellfish; reports.	28-174. Division may make rules, etc.; penalties for violation.
28-163. Launches.	28-175 to 28-177. [Repealed.]
28-164 to 28-168. [Repealed.]	28-178. Records of Division.
28-169. Uniforms and badges.	28-179. Prosecution of violators.

§§ 28-151 to 28-158. State Board of Fisheries.

Repealed by A. & J. R. 1952 (47) 2890.

Cross reference.—See now § 28-81 et seq.

§ 28-159. Jurisdiction of Division of Commercial Fisheries.

The Division of Commercial Fisheries shall have jurisdiction over all salt water fish, fishing and fisheries, all fish, fishing and fisheries in all tidal waters of the State and all fish, fishing and fisheries in all waters of the State whereupon a tax or license is levied for use for commercial purposes. This includes the following: all shellfish, crustaceans, diamond-back terrapin, sea turtles, porpoises, shad, sturgeon, rock, herring and all other migratory fish.

1942 Code § 3301; 1932 Code § 3301; 1924 (33) 1016; 1925 (34) 225; 1952 (47) 2890.

Effect of amendment.—The amendment of Fisheries and the substitution of the Division reflects the abolition of the State Board of Fisheries.

§ 28-160. Division to enforce laws.

The Division of Commercial Fisheries shall impartially enforce all laws pertaining to fish and fisheries.

1942 Code § 3308; 1932 Code § 3308; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—Formerly this duty was imposed upon the State Board of Fisheries.

§ 28-161. Collection of revenues.

The Division shall enforce all laws for collection of revenues due the State from the fishing industries and leases of bottoms.

1942 Code § 3315; 1932 Code § 3315; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—Formerly this section referred to "the Board" instead of "the Commission."

§ 28-162. Experimental propagation of shellfish; reports.

The Division of Commercial Fisheries may expend such sums as it may deem advisable, not to exceed one hundred dollars per annum, in the experimental propagation of shellfish upon suitable bottoms and it shall report such experiments, the results thereof and its conclusions therefrom to the Governor and the General Assembly in its annual reports.

1942 Code § 3309; 1932 Code § 3309; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—Formerly the section referred to the State Board of Fisheries instead of the Division.

§ 28-163. Launches.

The Division shall purchase, equip and maintain six launches, one for *Charleston* County, one for *Beaufort* County, one for *Georgetown* County, one for *Colleton* County and the remaining two launches for the territory at large and may provide for repairs to be made to launches, vessels, machinery and furniture as may be necessary to keep them in serviceable condition. It shall see that the launches and vessels and their appurtenances are at all times kept clean and otherwise in good serviceable condition and may sell or exchange any launch or vessel belonging to the police fleet and, in such case, reinvest the proceeds of such sale, or make further exchanges as may appear to be necessary and best for the interest of the State.

1942 Code § 3323; 1932 Code § 3323; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—Formerly the section referred to "the Board" rather than "the Division."

§§ 28-164 to 28-168. Inspectors and secretary.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-169. Uniforms and badges.

The Division may require the inspectors or other agents appointed by it to wear uniforms to be prescribed by it and badges of their authority as arresting officers under the Coastal Fisheries Law.

1942 Code § 3321; 1932 Code § 3321; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—Formerly the section referred to “the Board” instead of “the Division” and it referred to “the chief

inspector and the assistant inspectors” instead of to “the inspectors or other agents appointed by it.”

§ 28-170. Duties of inspectors; power of arrest.

The inspectors or other agents appointed by the Division for the purpose shall devote their entire time to the service of the State in carrying out the provisions, and enforcing compliance with the Coastal Fisheries Law and to that end they may arrest all violators of such law without warrant when the violations are committed within their own knowledge and observation and take them without unnecessary delay before some officer authorized to issue arrest warrants and swear out warrants for their arrest and deliver them to an officer of the law under such warrants. They may also, upon warrants for violations of the Coastal Fisheries Law sworn out by others, make arrest therefor.

1942 Code § 3322; 1932 Code § 3322; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—Formerly the section referred to “the chief inspector and his assistant inspectors” instead of to “the inspectors or other agents appointed by the Division for the purpose.”

This section provides that the inspectors shall devote their entire time to the duties of their office, and it could hardly

be maintained that such an indefinite expression as the parenthetical phrase “(Part or Full Time)” with reference to the salaries of the inspectors in the General Appropriation Act is effective as an amendment to this section. Langford v. State Board of Fisheries, 217 S. C. 118, 60 S. E. (2d) 59 (1950).

§ 28-171. Duties of assistant inspectors.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-172. Authority of inspectors.

It shall be lawful for the inspectors or other agents appointed by the Division for the purpose to enter any and all premises, vessels, boats, houses, sheds or warehouses used in fishing or any fishing industry in the tide waters or coastal section of this State and to arrest, without warrant, all persons found actually violating the penal laws contained in the Coastal Fisheries Law.

1942 Code § 3328; 1932 Code § 3328; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment added the phrase “or other agents appointed by the Division for the purpose.”

Constitutionality.—The provisions of this section allowing inspection and arrest without warrant on the premises of shrimpers licensed by the State of South Carolina and operating under State supervision are not unconstitutional. Shipman v. Du Pre, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

Arrest without warrant.—The power to arrest without warrant is not given by this section except in those cases where persons are found actually violating the law. This is but an enactment of the well-settled law that an officer may arrest without warrant for an offense committed in his presence. Shipman v. Du Pre, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

§ 28-173. Assistants to account for equipment.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-174. Division may make rules, etc.; penalties for violation.

The Division may adopt and promulgate rules and regulations for the government of the force under its control and for the control of fisheries, not contrary to or inconsistent with the laws and policy of the State, having the force and effect of law and may provide penalties for violation thereof not to exceed forfeiture of license or privilege previously granted by the Division.

1942 Code § 3310; 1932 Code § 3310; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The section formerly referred to “the Board” instead of to “the Division.”

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Wildlife Resources Commission, State, in volume 7.

Constitutionality.—See Shipman v. Du Pre, 222 S. C., 475, 73 S. E. (2d) 716 (1952).

Stated in Langford v. State Board of Fisheries, 217 S. C. 118, 60 S. E. (2d) 59 (1950).

§§ 28-175 to 28-177. Reports of inspectors.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-178. Records of Division.

The records and documents in the office of the Division shall include:

(1) A record of leases granted for bottoms for the propagation of shellfish and the subsequent changes of ownership thereof;

(2) The particulars and amounts of all licenses and permits of every kind issued;

(3) A tabulated record of the quantity of each kind of fish taken in the waters of the State, the commercial value thereof, the amount exported and the amount consumed within the State;

(4) The number of men engaged in the various branches of the fishing industries and their approximate earnings; and

(5) Any other matter which to them may appear advisable. All of such records shall be at all times open for inspection by the Governor or the Comptroller General or their accredited agents.

1942 Code § 3313; 1932 Code § 3313; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The section formerly referred to "the Board" instead of "the Division."

§ 28-179. Prosecution of violators.

The Division may prosecute for violations of such laws when in its judgment such prosecutions are for the best interests of industries or of the State and to that end may employ counsel having special knowledge of the fisheries laws and of the matters pertaining to fisheries and coastal conditions to work up and conduct such prosecutions in the inferior courts and to assist the solicitor in the court of general sessions and Supreme Court should he desire such assistance.

1942 Code § 3315; 1932 Code § 3315; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The section formerly referred to "the Board" instead of "the Division."

CHAPTER 4.

ATLANTIC STATES MARINE FISHERIES COMMISSION.

Sec.

28-201. State members of Commission.

§ 28-201. State members of Commission.

In pursuance of Article III of the Atlantic States Marine Fisheries Compact, of which this State is a signatory, there shall be three members, hereinafter called Commissioners, of the Atlantic States Marine Fisheries Commission, hereinafter called the Commission, from this State. The first Commissioner from this State shall be the Director of the Division of Commercial Fisheries ex officio, and the term of any such ex officio Commissioner shall terminate at the time he ceases to hold said office and his successor as Commissioner shall be his successor as chairman of the State Board of Fisheries. The second Commissioner from this State shall be a legislator and member of the Commission on interstate cooperation of this State ex officio, designated by said Commission on interstate cooperation and the term of any such ex officio Commissioner shall terminate at the time he ceases to hold such legislative position or such position as Commissioner on interstate cooperation and his successor as Commissioner shall be named in like manner. The Governor, by and with the advice and consent of the Senate, shall appoint a citizen as a third Commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of such Commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such Commissioner from any reason or cause shall be

filled by appointment by the Governor, by and with the advice and consent of the Senate, for the unexpired term. The Director of the Division of Commercial Fisheries as ex officio Commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting as his representative or substitute at any meeting of or hearing by or other proceeding of the Commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive Commissioner, provided the compact shall then have gone into effect in accordance with Article II thereof and otherwise shall begin upon the date upon which the compact shall become effective in accordance with said Article II.

1942 (42) 1725; 1952 (47) 2890.

Effect of amendment.—Formerly the chairman of the State Board of Fisheries was a member instead of the Director of the Division of Commercial Fisheries.

CHAPTER 6.

PROTECTION OF GAME.

Article 1.

General Provisions.

Sec.

- 28-300. Penalty for violation of Federal migratory bird regulations.
- 28-301. [Repealed.]
- 28-303.1. Keeping in storage of certain birds or animals.
- 28-304. [Repealed.]
- 28-305. Permit to poison predatory animals.

Article 2.

Hunting Licenses.

- 28-311.1. Licenses not to be sold outside of State.
- 28-313.1. Form of license.
- 28-313.2. Purchase of licenses and receipts.
- 28-313.3. Postdating licenses prohibited.
- 28-313.4. Licenses to be carried on person and shown on demand.
- 28-313.5. Issue of duplicate license.
- 28-314 to 28-321. [Repealed.]
- 28-322.1. Certain penalties.
- 28-322.2. Forfeiture of license for lending, etc.
- 28-322.3. Penalties for nonresidents hunting without license.
- 28-323 to 28-326. [Repealed.]

Article 3.

Closed and Open Seasons.

- 28-331.1. Same; closed season on pheasants until 1957.
- 28-332. [Repealed.]
- 28-333. Same; special provisions for Game Zone No. 1.
- 28-334.1. [Repealed.]
- 28-335. Season to hunt game birds and animals in Game Zone No. 4.
- 28-336. Same; certain provisions of § 28-335 not applicable to Lancaster County.
- 28-336.1. Same; closed season on wild turkeys and deer until August 31 1958.
- 28-336.2. Same; special provision for Game Zone No. 5.
- 28-336.3. Deer in Colleton County.

Sec.

- 28-338.1 to 28-340. [Repealed.]
- 28-341. Special provisions for Game Zone No. 7.
- 28-341.1. Same; exception as to quail season in Williamsburg County.
- 28-341.2. Same; penalties.
- 28-342. Exceptions for Chesterfield County.
- 28-343, 28-344. [Repealed.]
- 28-344.1. Quail and partridges in Darlington County.
- 28-345 to 28-354. [Repealed.]
- 28-358.1. [Repealed.]
- 28-358.2. Director may also close season on game on request of legislative delegation when conditions abnormal.
- 28-359 to 28-361. [Repealed.]

Article 4.

Bag Limits; Transportation and Shipment.

- 28-370. Bag limits for quail, partridges and turkeys.
- 28-371. [Repealed.]
- 28-374, 28-375. [Repealed.]
- 28-376.1. Special provisions for Game Zone No. 7.
- 28-376.2. Same; presumption from possession of game in excess of legal limits.
- 28-376.3. Special provision for Game Zone No. 5.
- 28-377. [Repealed.]
- 28-378. Limits in Colleton County.
- 28-379. [Repealed.]
- 28-379.1. Limit for quail and partridges in Bamberg County.
- 28-381. [Repealed.]
- 28-381.1. Limit for shipment of game within the State.
- 28-382. [Repealed.]
- 28-382.1. Label.
- 82-383. [Repealed.]
- 28-383.1. When transportation company not to receive game.
- 28-384. [Repealed.]

Sec.

28-387. Shipping of game beyond State limits by landowner or licensee.

Article 5.

Wild Non-Game Birds.

28-400. Killing, etc., wild non-game birds.

28-400.1. Sale of plumage, skin or body of such birds.

28-400.2. Destruction of eggs or nests of wild birds.

28-400.3. Wild non-game birds not to be transported.

28-400.4. Exceptions for scientific or household purposes.

28-400.5. Issue of certificates.

28-401 to 28-406. [Repealed.]

Article 6.

Foxes and Wildcats.

28-421 to 28-430. [Repealed.]

28-430.1. Hunting foxes.

28-430.2. [Repealed.]

28-430.3. Same; special penalty in Game Zone No. 5.

28-430.4. Same; exceptions for Game Zone No. 2.

28-431. Same; bounty in Colleton County.

28-432 to 28-435. [Repealed.]

28-436.1. When Director may declare open season on foxes.

28-437. [Repealed.]

28-439. Bounty for foxes killed in Greenville and Laurens Counties.

Article 7.

Special Provisions Relating to Other Animals and Game.

28-453. [Repealed.]

28-456.1. Forfeiture of vehicles, etc., used in hunting deer at night.

28-456.2. Sale of such vehicles, etc.

28-456.3. Buying or selling deer.

28-456.4. Possession of venison or fresh deer skins during closed season.

28-456.5. [Repealed.]

28-456.6. Possession of beheaded deer in transit prohibited.

28-457 to 28-460. [Repealed.]

28-463.1. Same; when numbered, marked or with name or initials of owner.

28-463.2. When Director may declare open season on coyotes.

Sec.

28-463.3. Coyotes not to be brought into State; trapping coyotes.

28-464 to 28-466. [Repealed.]

28-467.1. Sale of partridge, wild turkey or woodcock.

28-468. [Repealed.]

28-470. Pheasant eggs.

28-470.1. Rabbits destroying crops.

28-471. [Repealed.]

28-473. Shooting or killing of alligators prohibited in Game Zones 5, 6 and 7.

Article 8.

Furs, Traps, etc.

28-480. License to buy furs, hides, pelts, etc.

28-481. [Repealed.]

28-482.1. Tags for skins of game animals bought, stored or transported.

28-482.2. Forgery of tags.

28-482.3. Receipt for transportation without tag on package.

28-482.4. Reports of shipment.

28-482.5. Control of tags; proceeds of sale.

28-483 to 28-487. [Repealed.]

28-488.1. Use of dead falls for certain trapping prohibited.

28-489. [Repealed.]

28-491 to 28-494. [Repealed.]

Article 9.

Sanctuaries, Propagation, Preserves and Breeding.

28-510. Establishment of game sanctuaries.

28-511. [Repealed.]

28-511.1. Game Sanctuary in Berkeley County.

28-515. Game Sanctuary in Orangeburg County.

28-520. Jackson National Forest Game Refuge.

28-521. Camp Moore game propagation farm.

28-522. Hunting clubs and Game Preserves.

28-522.1. Breeding game birds other than pheasants for commercial purposes.

28-522.2. Breeding pheasants for commercial purposes.

28-523 to 28-525. [Repealed.]

ARTICLE 1.

General Provisions.

§ 28-300. Penalty for violation of Federal migratory bird regulations.

The Federal migratory bird treaty regulations, being the supreme law of the land under article VI of the Constitution of the United States, are hereby declared to be the law of this State and the penalty for their violation shall be punishment by fine of not less than twenty-five dollars nor more than one hundred dollars or thirty days' imprisonment.

1952 (47) 2179.

The adoption by reference of the federal migratory bird laws is valid and constitutionally unobjectionable, and perforce this

section such laws became of full force and effect as law of this State. Atty. Gen. Op., Sept. 19, 1953.

§ 28-301. Penalty for violation of Federal migratory bird regulations.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-300.

§ 28-303.1. Keeping in storage of certain birds or animals.

It shall be unlawful to keep any of the birds or animals forbidden to be sold by the terms of §§ 28-456.3 or 28-467.1 in cold storage or refrigerating plants, except in a private dwelling, unless the bird or animal in cold storage, or the package containing it, shall bear the name and address and the serial number and class of the hunting license of the owner of such bird or animal. Any person violating this section shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned one day for each dollar fined or unpaid, either or both.

1952 (47) 2179.

§ 28-304. Keeping in cold storage of certain birds or animals.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-303.1.

§ 28-305. Permit to poison predatory animals.

Any person desiring to put out poison on lands belonging to such person for the purpose of poisoning predatory animals shall first obtain a permit from the Director and shall publish the dates such poison will be put out and describe the areas where it will be placed by one notice in a newspaper published in the county in which such lands are situate. Poison may not otherwise be put out on lands in this State. Any person violating the provision of this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or imprisonment for not less than ten days or more than thirty days.

1952 (47) 2179.

ARTICLE 2.

*Hunting Licenses.***§ 28-311.1. Licenses not to be sold outside of State.**

No hunting license shall be sold or issued outside of the boundaries of the State.

1952 (47) 2179.

§ 28-312. License fees.

This section construed to prohibit one any county except that of his residence. from obtaining a county hunting license in Atty. Gen. Op., Jan. 14, 1954.

§ 28-313.1. Form of license.

All hunting licenses shall be of such quality and suitable design as may be designated by the Director, the cost thereof to be paid for out of the game protection fund.

1952 (47) 2179.

§ 28-313.2. Purchase of licenses and receipts.

The Joint Committtee on Printing shall purchase on competitive bids the licenses and forms of receipts that are necessary to be used each season.

1952 (47) 2179.

§ 28-313.3. Postdating licenses prohibited.

All game wardens and their agents in this State are hereby prohibited from postdating any hunting license. Any game warden or agent violating the provisions of this section shall be guilty of a misdemeanor and punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or thirty days' imprisonment.

1952 (47) 2179.

§ 28-313.4. Licenses to be carried on person and shown on demand.

Every licensee shall carry on his person his hunting license and upon demand shall show said license to any game warden or officer of the law.

1952 (47) 2179.

§ 28-313.5. Issue of duplicate license.

Duplicate hunting licenses shall only be issued by the Director, upon an affidavit from a licensee as to the loss of his original hunting license and upon payment by such licensee of the cost of the duplicate.

1952 (47) 2179.

§§ 28-314 to 28-321. Disposition of fees in Saluda County; form and material of license; purchase thereof; issuing by game wardens; display, exhibition on request; duplicates.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-313.1 to 28-313.5.

§ 28-322.1. Certain penalties.

The penalty for violating any provision of §§28-313.1, 28-313.2, 28-313.4, 28-313.5, 28-322 and 28-322.2 shall be the payment of a fine of not less than twenty-five dollars nor more than one hundred dollars or thirty days' imprisonment.

1952 (47) 2179.

§ 28-322.2. Forfeiture of license for lending, etc.

Any person convicted of borrowing, lending or exchanging a hunting license with another person, in addition to suffering the penalties set forth in § 28-322.1, shall forfeit his hunting license and all right to such hunting license and be prohibited from procuring another hunting license for the season for which the hunting license so borrowed, exchanged or loaned was issued. Should a person attempt to hunt or hunt while laboring under such prohibition, such person shall be guilty of hunting without a proper hunting license and subject to the penalty provided by law for hunting without a license.

1952 (47) 2179.

§ 28-322.3. Penalties for nonresidents hunting without license.

The penalty for a nonresident hunting without a nonresident hunting license in this State, shall be a fine of not less than fifty dollars nor more than one hundred dollars or imprisonment for not less than ten days nor more than thirty days for the first day of such offense and five dollars per day additional for each and every successive day of such offense.

1952 (47) 2179.

§§ 28-323 to 28-326. Penalties, forfeiture of license and disposition of fines and forfeitures.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-8.4, 28-12.1, 28-322.1, 28-322.2 and 28-322.3.

ARTICLE 3.*Closed and Open Seasons.***§ 28-331.1. Same; closed season on pheasants until 1957.**

Until April 25 1957 it shall be unlawful to hunt and kill with firearms or trap pheasants in this State except within the confines of privately owned preserves duly licensed by the Director.

1952 (47) 2179.

§ 28-332. Same; closed season on pheasants until 1955.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-331.1.

§ 28-333. Same; special provisions for Game Zone No. 1.

(6) The open season for hunting of squirrels shall be from September 15th through January 31st.

All portions of the year not designated as open seasons shall be considered as closed seasons.

Any person desiring to train rabbit hunting dogs may do so from September 1st to Thanksgiving Day without the use of firearms before the hunting season opens. Any violation of any of the provisions of this section shall be punishable by a fine of not more than one hundred dollars nor less than ten dollars or imprisonment of not more than thirty days.

1942 Code §§ 1789, 1789-1, 1790-4; 1938 (40) 1657; 1939 (41) 534; 1940 (41) 1728; 1941 (42) 225; 1949 (46) 579; 1953 (48) 392; 1954 (48) 1542.

Effect of amendment.—The 1954 amendment changed in paragraph (6) the date October 16th to September 15th. Prior to the 1953 amendment, in the last paragraph, the period for training rabbit hunting dogs was formerly limited to a period of fifteen

days before the hunting season opens. The introductory paragraph and the first five numbered paragraphs were not affected by the amendments and are therefore not set forth above.

§ 28-334.1. Same; exceptions for Anderson County.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-335. Season to hunt game birds and animals in Game Zone No. 4.

The open season for the hunting with firearms of rabbits, quail, squirrels and all other game birds or animals, except those coming under the provisions of the Federal Migratory Bird Treaty, in Game Zone No. 4 shall be from Thanksgiving Day to February first of the following year, both dates inclusive, except:

(1) The open season for the hunting of squirrels shall be from the first day of October of each year until the first day of March of the following year, both dates inclusive;

(2) The open season for the hunting of domestic doves shall be from September fifteenth to October fifteenth, both dates inclusive; and

(3) There shall also be an open season for the hunting of doves, domestic and otherwise, during such period as the government of the United States of America permits the hunting of migratory birds in said zone.

Any violation of any of the provisions of this section shall be punished by a fine of not more than one hundred dollars nor less than ten dollars or imprisonment for not exceeding thirty days.

1950 (46) 2360; 1952 (47) 2179.

Effect of amendment.—The amendment added the three numbered paragraphs.

§ 28-336. Same; certain provisions of § 28-335 not applicable to Lancaster County.

The provisions of the first (unnumbered) paragraph of § 28-335 shall not be applicable in *Lancaster* County but the provisions of the paragraphs numbered (1), (2) and (3) shall be applicable in that county.

1950 (46) 2360; 1952 (47) 2179.

Effect of amendment.—The amendment made clear that the provisions of paragraphs (1), (2) and (3) of § 28-335, which

were added in 1952, were applicable in *Lancaster* County.

§ 28-336.1. Same: closed season on wild turkeys and deer until August 31 1958.

There is hereby declared to be a five year closed season on hunting wild turkeys and deer in Game Zone 4 which shall begin on September 1 1953 and continue until August 31 1958. Any person hunting wild turkeys or deer in Game Zone 4 during such closed season shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or be imprisoned for a period not exceeding thirty days.

1953 (48) 623.

§ 28-336.2. Same; special provision for Game Zone No. 5.

The open season for hunting domestic game birds and animals in Zone No. 5 shall be from Thanksgiving Day to February 15th following, inclusive, except that:

(1) Deer (bucks only) may be hunted from September 15 to January 1, inclusive;

(2) Raccoons and opossums may be hunted from September 15 to February 15, inclusive; and

(3) Between September 15 and Thanksgiving Day rabbits may be hunted without firearms and squirrels may be hunted without dogs.

Any person violating any of the provisions of this section shall, upon conviction, be fined not exceeding one hundred dollars or imprisoned for not more than thirty days.

1953 (48) 292.

§ 28-336.3. Deer in Colleton County.

It shall be unlawful to hunt deer in *Colleton* County at any time between the first day of January and the fifteenth day of August next thereafter. The open season for hunting deer shall extend from the fifteenth day of August to and including the first of January, following. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished as provided by law for hunting deer out of season.

1953 (48) 7.

§§ 28-338.1 to 28-340. Special provisions for Game Zone No. 7 and various counties.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-341 to 28-341.3.

§ 28-341. Special provisions for Game Zone No. 7.

There are hereby created open and closed seasons for the hunting of game in Game Zone 7 as follows:

(1) There shall be no open season for the hunting of turkeys until April 25 1954;

(2) The open season for the hunting of buck deer shall be from September 15th to January 1st, inclusive;

(3) There shall be no open season for the hunting of female deer;

(4) The open season for the hunting of raccoon, mink, muskrat and otter shall be from September 15th to March 1st, inclusive;

(5) The open season for the hunting of squirrel shall be from October 1st to February 1st, inclusive;

(6) The open season for the hunting of quail shall be from sunrise to sunset on Thanksgiving Day and Friday and Saturday following and from the second Monday in December to February 15th, inclusive; and

(7) There shall be no closed season for the hunting of o'possum, rabbit or fox.

1952 (47) 2179.

§ 28-341.1. Same; exception as to quail season in Williamsburg County.

In *Williamsburg* County the quail hunting season shall run to and including March 1st.

1952 (47) 1844.

§ 28-341.2. Same; penalties.

Any person violating any of the provisions of §§ 28-341 or 28-376.1, shall be guilty of a misdemeanor and upon conviction shall be fined for the first offense not less than twenty-five dollars nor more than one hundred dollars or be imprisoned for not more than thirty days; for the second offense not less than fifty dollars nor more than one hundred dollars or be imprisoned for not more than thirty

days; for the third offense not less than one hundred dollars or be imprisoned for not more than sixty days; and for each subsequent offense the fine or imprisonment shall be doubled. Each violation of any provision of said section shall constitute a separate offense.

1952 (47) 2179.

§ 28-342. Exceptions for Chesterfield County.

The open season for hunting certain game in *Chesterfield* County shall be as follows: for quail and partridges from Thanksgiving Day to February fifteenth, inclusive; for squirrel shall be from October first to February first, inclusive; for deer, bucks only, shall be from August fifteenth to January first, inclusive.

1942 Code § 1781; 1936 (39) 1636; 1937 (40) 99; 1943 (43) 190; 1950 (46) 2257; 1952 (47) 1729.

Effect of amendment.—The amendment changed the opening of the season on deer from October first to August fifteenth.

§§ 28-343, 28-344. Special provisions for certain counties.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-344.1. Quail and partridges in Darlington County.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-336.2.

§§ 28-345 to 28-354. Special provisions for certain counties.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-358.1. Director may close season on game when conditions abnormal.

Repealed by A. & J. R. 1954 (48) 1428.

Cross reference.—See now § 28-358.2.

§ 28-358.2. Director may close season on game on request of legislative delegation when conditions abnormal.

When in any county of the State there exist abnormal conditions that might affect the supply of game or there is an abnormal scarcity of game, the Director of the Division of Game of the Wildlife Resources Department, upon the written request of a majority of the legislative delegation, including the Senator, from such county, may shorten or close the open season for hunting in any such county. The Director shall give notice of the closed or shortened season so declared by publication in at least two daily newspapers and in a newspaper of the county in which the closed or shortened season is declared, stating the length of period of such closed or shortened season. Any person found hunting with gun or dog within the restricted territory during a closed season so declared, shall be prima facie guilty of a violation of the provisions of this section, regardless of whether he has killed any game or not. The penalty for violation of the provisions of this section shall be a fine of not less than twenty-five dollars nor more than one hundred dollars or imprisonment for not less than thirty days.

1954 (48) 1428.

§§ 28-359 to 28-361. Closing or shortening season; applicability to Lancaster County.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-358.2.

ARTICLE 4.

Bag Limits; Transportation and Shipment.

§ 28-370. Bag limits for quail, partridges and turkeys.

The bag limit for quail and partridges shall be fifteen per day to the hunter and the bag limit for wild turkeys shall be two male turkeys per day and a total of five male turkeys per season to the hunter.

1952 (47) 2179.

§ 28-371. Bag limits for quail, partridges and turkeys.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-370.

§§ 28-374, 28-375. Limit for rabbits in Game Zone No. 4.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-376.1. Special provisions for Game Zone No. 7.

In Game Zone No. 7:

(1) No person shall kill more than one buck deer per day nor more than five per season;

(2) No person shall kill more than ten squirrels per day; and

(3) No person shall kill more than ten quail per day.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be punished as provided in § 28-341.2.

1951 (47) 244; 1952 (47) 2179.

Effect of amendment.—The amendment 338.3, now repealed, to new § 28-341.2, changed the reference from Code § 28- which provides the same penalty.

§ 28-376.2. Same; presumption from possession of game in excess of legal limits.

Any person having in his possession in Game Zone No. 7 on any lake, stream, river or their tributaries, going to or coming from such lake, stream, river or their tributaries, in the fields or woods or going to or coming from the fields or woods any game in excess of the limits provided in § 28-376.1 or in any State act shall be presumed to have killed or caught such game.

1952 (47) 2179.

§ 28-376.3. Special provision for Game Zone No. 5.

Not more than ten quail may be taken by any one person on any one day in Game Zone No. 5. Any person violating the provisions of this section shall, upon conviction, be fined not exceeding one hundred dollars or imprisoned for not more than thirty days.

1953 (48) 292.

§ 28-377. Limits for quail in Clarendon and Saluda Counties.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-378. Limits in Colleton County.

The bag limit for deer in *Colleton* County shall be three per season for each licensed individual. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, fined not more than one hundred dollars or imprisoned not more than thirty days.

1950 (46) 2287; 1952 (47) 2179.

Effect of amendment.—The amendment number of partridges and quail that could eliminated a former local limitation on the be killed in one day.

§ 28-379. Limit on turkeys in Richland County until June 9 1954.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-379.1. Limit for quail and partridges in Bamberg County.

The bag limit for quail and partridges in *Bamberg* County shall be ten per day to the hunter.

1952 (47) 1884.

§ 28-381. Game that may be carried from State.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-381.1. Limit for shipment of game within the State.

It shall be lawful for a person to ship during any one week not over the bag limit for two days, as provided by law, of any domestic game, birds or animals to any

private address in this State when he shall have conformed to the rules and regulations prescribed by the Director under § 28-382.1.

1952 (47) 2179.

§ 28-382. Limit for shipment of game within the State.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-381.1.

§ 28-382.1. Label.

Any person so desiring to ship game birds or animals as above described during the open season for such game birds or animals or within five days after the closing of the same shall make application to the Director or his deputy and upon such application the Director or his deputy, if it shall appear to him that such shipment is for private and personal use and not for sale of such game birds or animals, shall issue to the applicant a tag or label for use in shipping such game birds or animals. Such label shall be of such design and in such form as the Director shall prescribe.

1952 (47) 2179.

§ 28-383. Label.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-382.1.

§ 28-383.1. When transportation company not to receive game.

It shall be unlawful for any transportation company to receive for shipment any of the game birds or animals of the State, except in season, and unless the package containing them shall be so labeled as to show the consignor or consignee and the number and kind of game birds or animals.

1952 (47) 2179.

§ 28-384. When transportation company not to receive game.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-383.1.

§ 28-387. Shipping of game beyond State limits by landowner or licensee.

It shall be lawful for any landowner or licensee to ship or carry beyond the limits of this State during any one week not over the bag limit for one day, as provided by law, of any domestic game birds or animals, when he shall have conformed to the rules and regulations prescribed by the Director under this section. Any landowner or licensee desiring to ship domestic game birds or animals beyond the limits of the State during the open season for such game birds or animals shall make application to the Director, giving location of property and class and serial number of license held and upon such application, if it shall appear to the Director that such shipment is for private, personal or charitable use and not for sale of such game birds or animals, he may issue to the applicant a tag or label for use in shipping such game birds or animals, such tag or label to be of such design and in such form as the Director shall prescribe. Any person shipping or receiving for shipment beyond the limits of the State any domestic game birds or animals, in violation of the provisions of this section, shall be liable to a fine of not less than fifty dollars, nor more than one hundred dollars, or imprisonment for thirty days for each and every offense.

1942 Code § 1786-6; 1932 Code § 1778; 1924 (33) 1056; 1952 (47) 2179.

Effect of amendment.—The duties now exercised by the Director were formerly imposed upon the Chief Game Warden.

ARTICLE 5.

*Wild Non-Game Birds.***§ 28-400. Killing, etc., wild non-game birds.**

No person within the State shall kill, catch or have in his possession, living or dead, any resident or migratory wild bird, other than a game bird or buzzard, or purchase, offer or expose for sale any such wild non-game bird after it has been killed or caught, except as permitted by §§ 28-400.4 and 28-400.5.

1952 (47) 2179.

§ 28-400.1. Sale of plumage, skin or body of such birds.

No part of the plumage, skin or body of any bird protected by § 28-400 shall be sold or had in possession for sale and this irrespective of whether such bird was captured or killed within or without the State.

1952 (47) 2179.

§ 28-400.2. Destruction of eggs or nests of wild birds.

No person within the State shall take or destroy, or attempt to take or destroy, the nest or the eggs of any wild bird or have such nest or eggs in his possession, except as permitted in §§ 28-400.4 and 28-400.5.

1952 (47) 2179.

§ 28-400.3. Wild non-game birds not to be transported.

It shall be unlawful for any person acting as a common carrier, its officers, agents or servants, to ship, carry, take or transport, either within or beyond the confines of the State, any resident or migratory wild non-game bird, except as permitted by § 28-400.5.

1952 (47) 2179.

§ 28-400.4. Exceptions for scientific or household purposes.

The prohibitions of this article shall not apply to any person holding a certificate giving the right to take birds, their nests or eggs, for strictly scientific purposes, as provided for in § 28-400.5, nor shall anything contained in this article prevent any householder from keeping any resident or migratory birds, whether game or non-game, in aviaries or cages as pets or for experimental and breeding purposes or from trapping or catching them for such purposes if they are trapped or caught on his own lands and are not kept for barter, sale or exchange.

1952 (47) 2179.

§ 28-400.5. Issue of certificates.

Certificates may be granted by the Director to any properly accredited person of the age of fifteen years or upwards, permitting the holder thereof to collect birds, their nests or eggs, for strictly scientific purposes only. In order to obtain such a certificate the applicant for it must present to the Director written testimonials from two well-known ornithologists, certifying to the good character and fitness of the applicant to be entrusted with such privilege, and must pay to the Director one dollar to defray the necessary expenses attending the granting of such certificate. On proof that the holder of such certificate has captured or killed any bird or taken the nests or eggs of any bird for other than scientific purposes the certificate shall become void and he shall be liable to a fine of not more than one hundred dollars or imprisonment not exceeding thirty days. The certificates authorized by this section shall expire on the thirty-first day of December of the year issued and shall not be transferable.

1952 (47) 2179.

§§ 28-401 to 28-406. Protection of wild non-game birds.

Repealed by A. J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-400 to 28-400.5.

ARTICLE 6.

*Foxes and Wildcats.***§§ 28-421 to 28-430. When foxes may be hunted generally; various local exceptions.**

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-430.1. Hunting foxes.

Foxes may be hunted at any time except that firearms may not be used in such hunting between January second and August fifteenth of each year.
1952 (47) 2179.

§ 28-430.2. Same; exceptions for Game Zone No. 2.

Repealed by A. & J. R. 1954 (48) 1808.

Cross reference.—See now § 28-430.4.

§ 28-430.3. Same; special penalty in Game Zone No. 5.

Any person violating the provisions of § 28-430.1 in Game Zone No. 5 shall, upon conviction, be fined not exceeding one hundred dollars or imprisoned for not more than thirty days.

1953 (48) 292.

§ 28-430.4. Same; exceptions for Game Zone No. 2.

There shall be no closed season for hunting foxes in Game Zone No. 2, however, poison and steel traps may not be used.

1954 (48) 1808.

§ 28-431. Same; bounty in Colleton County.

The governing body of *Colleton* County and other governing bodies in the county may pay such bounties as they deem proper for the lawful killing of foxes and may establish such regulations with respect to the payment of such bounties as they deem proper in the circumstances.

1943 (43) 120; 1952 (47) 2179.

Effect of amendment.—The amendment ing with the manner of hunting foxes in repealed the former first paragraph deal- the county.

§§ 28-432 to 28-435. Local county provisions relating to foxes.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-436.1. When Director may declare open season on foxes.

Whenever it shall appear that foxes are destroying birds, poultry, pigs, lambs or other property or that there is an apparent epidemic of rabies in any county in this State, the Director, upon the written request of a majority of the county legislative delegation, shall declare an open season on foxes, with the use of firearms, in the county suffering from such destruction for such period of time as such delegation may deem desirable.

1952 (47) 2179.

§ 28-437. Foxes destroying property.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-436.1.

§ 28-439. Bounty for foxes killed in Greenville and Laurens Counties

The game wardens of *Greenville* and *Laurens* Counties shall offer and pay a bounty to persons killing foxes in said counties. The amount of such bounty shall be two dollars for each fox killed. In order for a person to receive a bounty under the provisions of this section such person shall make an affidavit that the fox was killed in *Greenville* County or *Laurens* County, as the case may be, and by whom killed. He must produce two ears joined by a part of the scalp of each fox killed and shall comply with any reasonable rules and regulations promulgated by the respective county game wardens to carry out the purposes of this section. The county

game wardens may authorize any seller of licenses to receive such affidavit and such evidence and pay the bounty. The bounty shall come out of *Greenville* County or *Laurens* County funds in the office of the Division of Game and whenever it shall appear that such moneys are not available for either of said counties to pay such bounties the offer and payment of such bounties shall cease as to foxes killed in such county.

1949 (46) 75; 1950 (46) 1832; 1951 (47) 65; 1953 (43) 482.

Effect of amendment.— Reorganization Plan No. 8 (A. & J. R. 1952 (47) 2890) and Act No. 898 of A. & J. R. 1952 (47), 1952 (47) 2179, abolished all county game wardens and therefore by implication repealed this section. However the 1953 act

undertook to amend it by eliminating Anderson County. But as there are no game wardens of Greenville or Laurens Counties it is still believed that no part of the section can be operative.

ARTICLE 7.

Special Provisions Relating to Other Animals and Game.

§ 28-453. Same; absolute prohibition in Edgefield County.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-456.1. Forfeiture of vehicles, etc., used in hunting deer at night.

Every vehicle, boat, animal and firearm used in the hunting of deer at night is hereby declared forfeited to the State and shall be confiscated by any peace officer, who shall forthwith deliver it to the Director or his duly authorized agent.

The term "*hunting*" as used in this section in reference to a vehicle or boat shall include the transportation of a hunter to or from the place of hunting and the transportation of the carcass, or any part thereof, of a deer which has been unlawfully killed at night.

1952 (47) 2179.

§ 28-456.2. Sale of such vehicles, etc.

The Director or his authorized agent shall sell any such vehicle, boat, animal or firearm at public auction for cash to the highest bidder in front of the county courthouse in the county in which it was confiscated, after having given ten days' public notice of such sale by posting advertisement thereof on the door or bulletin board of the county courthouse or by publishing such advertisement at least once in a newspaper of general circulation in the county. Upon such sale the Director shall pay over the net proceeds thereof, after payment of the proper costs and expenses, if any, of the seizure, advertisement and sale, including any proper expense incurred for the storage of such vehicle or boat or for the housing and feeding of such animal pending the sale, to the State Treasurer for deposit in the game protection fund. But when such vehicle, boat or animal is of greater value than one thousand dollars, the owner thereof may at any time before sale redeem it by paying to the Director for deposit as aforesaid the sum of one thousand dollars therefor.

1952 (47) 2179.

§ 28-456.3. Buying or selling deer.

It shall be unlawful to buy or sell, offer for sale, barter or have in possession for sale any deer or part thereof. For a violation of this section, upon conviction, the guilty party shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned not more than thirty days for any deer or part thereof.

1952 (47) 2179.

§ 28-456.4. Possession of venison or fresh deer skins during closed season.

Any person in whose possession recently killed venison or fresh deer skins shall be found during the closed season for hunting deer shall be guilty of a misdemeanor and upon conviction be punishable by a fine of not more than one hundred dollars nor less than twenty-five dollars or imprisonment not exceeding thirty days.

1952 (47) 2179.

§ 28-456.5. Possession of beheaded deer in transit in Game Zone No. 6 prohibited.

Repealed by A. & J. R. 1954 (48) 1764.

Cross reference.—See § 28-456.6.

§ 28-456.6. Possession of beheaded deer in transit prohibited.

It shall be unlawful for any person in this State to have in his possession any deer with the head detached when such person is in transit from any woods, swamps, fields or roads. Any person transporting a deer with the head detached shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to thirty days' imprisonment, or both. The possession of any deer with the head detached shall be prima facie evidence that the deer is a doe. But this shall not apply to possession at a private residence or place of business.

1954 (48) 1764.

§§ 28-457 to 28-460. Forfeiture and sale of vehicles, etc., used in hunting deer at night; buying or selling deer.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-456.1 to 28-456.4.

§ 28-463.1. Same; when numbered, marked or with name or initials of owner.

No person, except the owner thereof, shall catch, kill, capture or detain any homing, racing or carrier pigeon which at the time of its capture or detention has the name or initials of its owner, its number or any other mark designating it as a homing, racing or carrier pigeon. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars or imprisonment of not exceeding thirty days.

1952 (47) 2179.

§ 28-463.2. When Director may declare open season on coyotes.

Whenever it shall appear that coyotes are destroying birds, poultry, pigs, lambs or other property or that there is an apparent epidemic of rabies in any county in this State, the Director, upon the written request of a majority of the county legislative delegation, shall declare an open season on coyotes, with the use of firearms, in the county suffering from such destruction for such period of time as such delegation may deem desirable.

1952 (47) 2179.

§ 28-463.3. Coyotes not to be brought into State; trapping coyotes.

It shall be unlawful to bring a coyote into the State in any manner, except one brought into the State and kept in captivity for exhibition purposes, or to release a coyote within the State. Any violation of this section shall be punishable by imprisonment for not more than one year or by a fine not exceeding five hundred dollars. It shall be lawful for any person to trap or kill any coyote in this State at any time; provided that before trapping coyotes outside the trap distance limits as prescribed in § 28-490 a permit shall be obtained from a game warden.

1952 (47) 2179.

§§ 28-464 to 28-466. Shooting pigeons when owner's name shown; coyotes destroying property; coyotes not to be brought into State.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-463.1 to 28-463.3.

§ 28-467.1. Sale of partridge, wild turkey or woodcock.

It shall be unlawful for any person to buy or barter for sale any partridge, wild turkey or woodcock within this State. Any person violating this section shall be

fined twenty-five dollars for each partridge, wild turkey or woodcock so bought or sold or imprisoned for not more than thirty days for each partridge, wild turkey or woodcock so bought or sold.

1952 (47) 2179.

§ 28-468. Sale of partridge, wild turkey or woodcock.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-467.1.

§ 28-470. Pheasant eggs.

It shall be lawful for anyone to own, possess, control, sell or otherwise dispose of pheasant eggs within this State or to sell or otherwise dispose of such eggs beyond the borders of the State, under such regulations as the Director may promulgate.

1942 Code § 1783-5; 1932 Code § 1789; 1931 (37) 354; 1952 (47) 2890.

Effect of amendment.—The power now vested in the Director was formerly exercised by the Chief Game Warden.

§ 28-470.1. Rabbits destroying crops.

When in any section of any county or in any county, in this State, rabbits are destroying crops, the Director, upon request of a majority of the county legislative delegation, in writing, may declare an open season on rabbits that are destroying crops, for such period of time as may be deemed advisable for the protection of such crops.

1952 (47) 2179.

§ 28-471. Rabbits destroying crops.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-470.1.

§ 28-473. Shooting or killing of alligators prohibited in Game Zones 5, 6 and 7.

It shall be unlawful for any person to shoot or kill an alligator at any time during the year in Game Zone No. 5, Game Zone No. 6 or Game Zone No. 7. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall in Game Zone No. 5 or Game Zone No. 6 pay a fine of not exceeding one hundred dollars or be imprisoned for not exceeding thirty days, in the discretion of the magistrate, and in Game Zone No. 7 shall be punished as provided in § 28-341.2.

1949 (46) 540; 1951 (47) 244; 1952 (47) 2179.

Effect of amendment.—The amendment repealed, to the corresponding new section changed the reference from § 28-338.3, now § 28-341.2.

ARTICLE 8.

Furs, Traps, etc.

§ 28-480. License to buy furs, hides, pelts, etc.

It shall be unlawful for any person to engage in the business of buying furs, hides, except hides of domestic animals, pelts or similar articles in this State without first procuring a license to do so from the Director's office. Any resident of this State may procure a State license for such purposes upon the payment of an annual license fee of twenty-five dollars, which shall entitle such resident to purchase such articles in all counties of the State. A nonresident engaged in the buying of such articles shall pay an annual license fee of one hundred dollars. Every firm or corporation engaged in the business of buying such articles shall be required to purchase a separate license for each individual buyer.

It shall be unlawful for any person, firm or corporation to borrow, lend or exchange a license.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars, nor more than five hundred dollars, or imprisoned for not less than thirty days nor more than six months.

1952 (47) 2179.

§ 28-481. License to buy furs, hides, pelts, etc.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-480.

§ 28-482.1. Tags for skins of game animals bought, stored or transported.

All persons buying, storing, shipping or transporting furs, pelts, skins or hides shall make application to the game warden or his authorized deputy for a tag or label which shall be securely attached to the fur, pelt, skin or hide so bought, stored, shipped or transported. Such tags or labels shall be of such design and in such form as the Director may prescribe and the cost of such tags or labels to the person buying, storing, shipping or transporting such furs, pelts, skins or hides shall be according to the following schedule for each tag or label:

- (1) An otter or a red fox hide or skin, one dollar;
- (2) A raccoon, grey fox or mink hide or skin, fifteen cents;
- (3) A skunk hide or skin, ten cents; and
- (4) An opossum or muskrat hide or skin, five cents.

The tag shall be purchased in the county in which the furs, pelts, hides or skins are bought, stored, shipped or transported.

The penalty for violation of this section shall be punishment by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment for not less than thirty days, nor more than six months, for each and every offense.

1952 (47) 2179.

§ 28-482.2. Forgery of tags.

Whoever shall be convicted of falsely making, forging or counterfeiting, causing or procuring to be falsely made, forged or counterfeited or wilfully acting or assisting in the false making, forging or counterfeiting of any stamp, tag or label provided for in § 28-482.1 shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars, nor more than five hundred dollars, or be imprisoned for not less than thirty days nor more than six months for each offense.

1952 (47) 2179.

§ 28-482.3. Receipt for transportation without tag on package.

It shall be unlawful for any person to receive for shipment or transportation any of the skins, furs, hides or pelts mentioned in § 28-482.1 except when there shall be affixed to each package a stamp, tag or label furnished by the Director or his authorized deputy, certifying that the tags or labels required to be attached to each article contained in such package under the provisions of said section have been properly attached and paid for. Any game warden or representative of the Director may open and inspect any package containing furs, pelts, hides or skins shipped or transported for the purpose of ascertaining whether the tags provided for have been properly attached to each article as required in said section. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars, nor more than five hundred dollars, or imprisoned for not less than thirty days nor more than six months.

1952 (47) 2179.

§ 28-482.4. Reports of shipment.

Every person shipping or transporting skins, pelts, furs or hides shall make a report to a game warden in the county on or before the fifteenth day of each month

stating the number of skins, pelts, furs or hides that have been shipped or transported during the preceding calendar month. The penalty for failure to make such report shall be a fine of not less than one hundred dollars, nor more than five hundred dollars, for each offense or imprisonment for not less than thirty days nor more than six months for each offense.

1952 (47) 2179.

§ 28-482.5. Control of tags; proceeds of sale.

All tags or labels placed with any game warden or other person for sale and the proceeds arising from the sale of all tags or labels are to be held in trust, subject to the order of the Director. All funds arising from the sale of all tags or labels shall be paid over to the Director at such times as he may direct and all unused tags or labels shall be returned to him upon demand. All game wardens or other persons with whom tags or labels are placed for sale shall be liable for the loss, misplacement or destruction of any such tags or labels while in their care to the full extent of the value thereof. All game wardens or other persons who shall fail or neglect to remit to the Director for all funds arising from the sale of tags or labels or who shall fail or neglect to return to the Director any unused tags or labels, upon demand of the Director for such funds or unused tags or labels, shall be liable to a fine of not less than five hundred dollars, or imprisonment for six months, in addition to the full value of such tags or labels placed with such game warden or other person for sale.

1952 (47) 2179.

§§ 28-483 to 28-487. Tags for skins of animals, etc.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-482.1 to 28-482.5.

§ 28-488.1. Use of dead falls for certain trapping prohibited.

The use of a trap commonly known as a “*dead fall*” for the catching or trapping of animals is hereby declared unlawful. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars nor more than one hundred dollars or be imprisoned for more than thirty days.

1952 (47) 2179.

§ 28-489. Use of dead falls for certain trapping prohibited.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-488.1.

§§ 28-491 to 28-494. Exceptions in certain areas; disposition of fines and fees.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—As to § 28-494, see now § 28-12.1.

ARTICLE 9.

Sanctuaries, Propagation, Preserves and Breeding.

§ 28-510. Establishment of game sanctuaries.

The Director shall, without any costs whatsoever to the State, designate and establish sanctuaries where game, birds and animals may breed, unmolested, if any landowner shall enter into an agreement with the Director to set aside and turn over to the State for such purpose any certain number of acres of land. There shall be no hunting or trespassing upon such lands so designated as a sanctuary by anyone for a period of five years from the date of such an agreement. The Director may post such lands so designated as a sanctuary in the name of the State and may prosecute any person hunting or trespassing thereon. Any agreement entered into under the authority herein given may be terminated at any time by the mutual consent of the landowner and the Director. And anyone hunting or

trespassing upon any land designated as a sanctuary under the provisions of this section shall be fined for each offense not less than one hundred dollars nor more than two hundred dollars or imprisoned for not less than one nor more than six months.

1952 (47) 2179.

§ 28-511. Establishment of game sanctuaries.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-510.

§ 28-511.1. Game sanctuary in Berkeley County.

All that territory located within Hanahan Public Service District in Berkeley County is hereby declared to be a non-game bird sanctuary. Any person killing any non-game bird within such sanctuary shall be guilty of a misdemeanor and upon conviction there shall be subject to a fine of from one to twenty-five dollars or to imprisonment not to exceed five days.

1954 (48) 1430.

§ 28-515. Game sanctuary in Orangeburg County.

The Director may establish the area hereinafter designated as a game sanctuary for such period or periods as he may fix, not to exceed five years from June 4 1949. The area referred to in this section contains approximately nine hundred acres near *Eutaw Springs* in *Orangeburg* County and is bounded on the north by Lake Marion at 68 foot level, on the south by public road, South Carolina Highway S-38-137, on the east by the Old Ferguson Railroad Bed, leading from said public road to 68 foot water level in Lake Marion, and on the west by 70 foot water level on the east side of Eutaw Creek. The boundary lines of the area shall be marked by appropriate signs which clearly indicate that the area is closed only to hunting. This section shall not be construed to prohibit fishing in this sanctuary.

1949 (46) 1511; 1952 (47) 2890.

Effect of amendment.—The amendment which was formerly conferred upon the conferred upon the Director the power Chief Game Warden.

§ 28-520. Jackson National Forest game refuge.

The Director may take over the Jackson National Forest as a game refuge, comply with the conditions required by the United States Government, through its department of agriculture, with reference thereto and employ a game warden and pay him a salary not to exceed the amount provided by law in order that he may live on this property and protect it. The above-mentioned expenditures shall be paid out of the game protection fund.

1942 Code § 1788-2; 1932 Code § 3293; 1928 (35) 1991; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Director for the former Chief Game Warden.

§ 28-521. Camp Moore game propagation farm.

The supervision of the game propagation farm on the property of the State in *Lerington* County known as "Camp Moore" at *Styr* shall be under the direction and authority of the Director. The distribution of game birds or animals raised on said game propagation farm shall be made to citizens of the State upon requisitions endorsed by the respective county legislative delegations, in such proportions and in such manner as may be deemed proper and appropriate by the Director, for the purpose of restocking any sections of the State that have been depleted.

1942 Code § 1788-1; 1932 Code § 3292; 1924 (33) 1184; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Director for the former Chief Game Warden.

§ 28-522. Hunting clubs and game preserves.

All hunting clubs and game preserves in the State shall register with the Director the name and location of such club or game preserve, giving the name and post office address of each club or game preserve and the name and residence address of each and every member of such club or game preserve. Such registration shall be made on or before July 1st of each year of all clubs or game preserves in this State by that time and all new clubs or game preserves established after July 1st of each year shall be promptly registered with the Director. All new members taken into any hunting club or game preserve shall be promptly registered with the Director at the time they become members thereof. Between March 1st and April 1st of each year every hunting club or game preserve shall file a report with the Director giving the number and kind of game birds and game animals killed or taken by the members of such hunting club or game preserve during the hunting season ending March 1st of each year. The penalty for violating any provision of this section shall be a fine of not less than twenty-five dollars, nor more than one hundred dollars, or imprisonment for not less than thirty days nor more than six months.

1942 Code § 1788-4; 1932 Code § 3297; 1927 (35) 161; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Director in place of the former Chief Game Warden.

§ 28-522.1. Breeding game birds other than pheasants for commercial purposes.

Any person desiring to engage in the business of raising, breeding and selling any game bird other than a pheasant in a wholly enclosed preserve or entire island of which he is the owner or lessee, may make application in writing to the Director for a license to do so and the Director when it shall appear that such application is made in good faith shall, upon the payment of a fee of two dollars and fifty cents, issue to such applicant a breeder's license, permitting such applicant to raise and breed such game birds on such preserve or entire island, and to sell them at any time for breeding or stocking purposes. Such license shall expire on the last day of January of each year. Any person who secures a breeder's permit from the Director may secure from the Director's office a permit allowing the shipping of such live birds as he raises beyond the limits of the State.

It shall be unlawful for any person to engage in raising, breeding or selling for stocking purposes such game birds without first obtaining a license therefor. Any violation of this section shall be punishable by a fine of not less than twenty-five dollars or imprisonment for not more than thirty days.

1952 (47) 2179.

§ 28-522.2. Breeding pheasants for commercial purposes.

Any person desiring to engage in the business of raising, breeding and selling pheasants for breeding and stocking purposes, including the sale of dead birds deemed unsuited for breeding purposes, in a wholly enclosed preserve of which such person is the owner or lessee, may make application in writing to the Director for a license to do so and the Director, when it shall appear that such application is made in good faith, shall, upon the payment of a fee of two dollars and fifty cents, issue to such applicant a breeder's license, permitting such applicant to raise, breed and sell pheasants on such preserve for breeding and stocking purposes and to sell dead birds deemed unsuited for breeding or stocking purposes. Such license shall expire on the last day of January of each year. Any person who secures a breeder's permit shall render promptly to the Director's office a report of the sale of each pheasant and of eggs disposed of, setting forth the purpose of such sale or disposition, the amount realized and the name and address of the purchaser in accordance with the reporting procedure as shall be formulated and promulgated by the Director.

It shall be unlawful for any person to engage in the raising, breeding and sale of pheasants or to have in his possession any pheasant without first obtaining a license therefor, except dead birds procured from a licensed breeder. Any violation of any of the provisions of this section shall constitute a misdemeanor punishable by a fine not exceeding one hundred dollars or imprisonment for not more than thirty days.

1952 (47) 2179.

§§ 28-523 to 28-525. Breeding game birds for commercial purposes; distribution for restocking in York County.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-522.1 and 28-522.2.

CHAPTER 7.

PROTECTION OF FISH, ETC.

Article 1.

Licenses Generally.

Sec.

28-552.1. License fee; use of receipts.

28-552.2. Nonresident license; use of receipts.

28-552.3. Temporary nonresident license in York County.

28-552.4. Form of license; license to be carried on person.

28-552.5. Director to provide for licenses.

28-552.6. License to be carried while fishing and shown.

28-552.7. Penalties.

28-552.8. [Repealed.]

28-553 to 28-559. [Repealed.]

Article 2.

Restrictions on Fishing Generally.

28-570. How game fish must be caught.

28-571. [Repealed.]

28-573. Same; exception for carp and cat fish caught under license.

28-574. Same; exception for use of trotlines for catching non-game fish.

28-574.1. Same; penalty.

28-575. Certain methods of catching fish prohibited in Colleton County.

28-576.1. When closed season declared on clear water streams.

28-576.2. Notice of such closed season.

28-576.3. Prima facie evidence of violation.

28-577 to 579. [Repealed.]

28-589. Laws regulating fishing in clear and fresh water streams applicable to Lake Murray.

28-589.1. Daily limits of game fish.

28-590. [Repealed.]

28-592. [Repealed.]

28-593.1. Limits on size of fish taken from certain lakes in Game Zone No. 2.

28-593.2. Penalty for violating §§ 28-593 or 28-593.1.

28-594. Limit on size of flat fish caught in Prestwood Lake, Darlington County.

28-596. Use baskets and trot lines to catch non-game fish in Lake Murray; non-game fish tag required.

Sec.

28-597.1. Owners of ponds must have permit to catch fish therein for propagation.

28-598. to 28-600 [Repealed.]

Article 3.

Seines, Traps, Obstructions in Streams, etc., Generally.

28-610. Use of nets, traps or other devices to catch non-game fish.

28-610.1. Same; closed period from Saturday evening to Wednesday morning.

28-610.2. Sections inapplicable to dip nets or skinn-bow nets used by hand.

28-610.3. Penalty.

28-610.4. Forfeiture of seines, etc., illegally used.

28-611, 28-612. [Repealed.]

28-616.1. Use of net or seine in clear waters of Clarendon County prohibited.

28-618 to 28-623. [Repealed.]

28-624. Shooting of fish in certain counties.

28-625 to 28-638. [Repealed.]

28-639.1. Taking fish from trap or net.

28-640 to 28-647. [Repealed.]

28-648.1. Permanent obstruction to migration of fish.

28-649 to 28-652. [Repealed.]

28-654. Designation of fish sluices; obstruction thereof.

Article 3.1.

Special Provisions for Game Zone No. 7.

28-664.1. Exception for certain gill nets.

28-664.2. Exception for Florence County.

28-666. Confiscation of fish nets, traps, etc.

28-667. Fishing for catfish.

28-667.1. Possession of fish in excess of legal limits.

Article 4.

Pollution, Poisoning, etc., of Streams; Dynamiting.

28-671.1. Poisoning waters, etc., to catch fish.

28-672. [Repealed.]

28-673.1. Using explosives to take fish.

Sec.

28-673.2. Same; prima facie evidence of guilt.

28-673.3. Person convicted not to hunt or fish for period thereafter.

28-673.4. Failure to report dynamiting.

28-673.5. Informers not subject to suit for slander, etc.

28-674 to 28-677. [Repealed.]

Article 5.**Sale or Traffic in Fish.**

28-690. Sale or traffic in game fish and certain other fish.

28-691. [Repealed.]

28-692. Same; other game fish.

28-692.1. Sale of game fish caught from certain artificial lakes in Game Zone No. 2; confiscation of illegal devices.

28-692.2. How owner may draw private pond and dispose of fish caught.

Sec.

28-693. [Repealed.]

28-697. [Repealed.]

Article 6.**Fish Hatcheries and Fish Sanctuaries; Propagation.**

28-710.1. Acquisition of land for fish hatcheries.

28-710.2. Same; for United States fish hatcheries.

28-711 to 28-714. [Repealed.]

28-715. Distribution of fish raised in hatchery in Greenville County.

28-715.1. Establishment of fish sanctuaries.

28-715.2. Designation in rivers and streams.

28-715.3. Designation in lakes and ponds.

28-715.4. Effect of such establishment.

28-715.5. Penalties for violation of such sanctuaries.

28-716 to 28-720. [Repealed.]

28-721. Sanctuary in Little Pee Dee Swamp.

ARTICLE 1.*Licenses Generally.***§ 28-552.1. License fee; use of receipts.**

The license fee for such fishing in this State shall be one dollar and ten cents per calendar year. Ten cents of such fee shall go to the agent issuing the license and the remaining portion shall be used solely for the rearing, protection, propagation and distribution of fish and the publication and dissemination of information of such facts and findings as may, in the opinion of the Department and the Director, be wise and expedient.

1952 (47) 2179.

§ 28-552.2. Nonresident license; use of receipts.

All nonresidents of this State, before fishing for game or other fish in any manner in the inland streams or waters of this State, shall first procure a nonresident fishing license the fee for which shall be ten dollars and twenty-five cents. The license shall be in form and design as designated by the Director and shall be carried upon the person of the licensee at all times when he is fishing. It shall be unlawful for the licensee, the selling agent or any other person to alter or change the date or to back date any license. Upon any violation of this section the license shall immediately be forfeited to the State. Any person violating the provisions of this section shall, upon conviction, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or be imprisoned for a period not exceeding thirty days for each and every offense. All proceeds from the sale of nonresident fishing licenses shall be credited to the county game fund of the counties in which such licenses are sold and the funds shall be expended in the respective counties for the purpose of propagation of fish and game and for the enforcement of game laws.

1952 (47) 2179.

§ 28-552.3. Temporary nonresident license in York County.

In *York* County a nonresident who does not desire a license for the entire period may, in lieu of the license required by § 28-552.2, obtain a temporary license which shall authorize the holder thereof to exercise, in *York* County only, the privileges thereby granted for three consecutive days. The cost of the temporary license shall be three dollars and ten cents. All other provisions of § 28-552.2 shall apply to any such temporary license.

1952 (47) 1923

§ 28-552.4. Form of license; license to be carried on person.

All persons applying for licenses shall receive such form of license as may be provided of such quality and suitable design as may be designated by the Director, the cost thereof to be paid out of the game protection fund.

1952 (47) 2179.

§ 28-552.5. Director to provide for licenses.

The Director of the Division of Game shall provide for the furnishing of licenses under the terms of §§ 28-552.1 and 28-552.4 in accordance with the provisions in force on April 24 1952 concerning hunting licenses.

1952 (47) 2179.

§ 28-552.6. License to be carried while fishing and shown.

Every person shall, while fishing, carry upon his person such license and shall show such license to any officer upon demand.

1952 (47) 2179.

§ 28-552.7. Penalties.

Any one convicted of violating any of the provisions of § 28-550 or § 28-552.6 shall be sentenced to pay a fine of not less than twenty-five dollars, nor more than one hundred dollars, or serve not less than ten days or more than thirty days.

1952 (47) 2179.

§ 28-552.8. Reciprocal agreement with Georgia.

Repealed by A. & J. R. 1953 (48) 366.

See now § 28-1250.6.

§§ 28-553 to 28-559. Licenses generally.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-552.1 to 28-552.8.

ARTICLE 2.*Restrictions on Fishing Generally.***§ 28-570. How game fish must be caught.**

The catching of game fish in all waters of the State shall be only with hook and line, fly rod, casting rod, pole and line and handline. Not more than two of such devices may be used by any one individual while fishing.

1952 (47) 2179.

§ 28-571. How fish must be caught.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-570.

§ 28-573. Same; exception for carp and catfish caught under license.

The Director may issue licenses to persons to catch carp and catfish in the waters of the lakes referred to in § 28-572 by the use of baskets made from split wood, commonly known as split wood baskets. The license fee shall be one dollar for each split wood basket which the licensee proposes to use. In his application to the Director any person desiring to be licensed to use split wood baskets in the area shall state the number of baskets which he desires to use and the Director, if he elects to license the applicant, shall issue to him a license tag which shall have such mark of identification as may be determined or prescribed by the Director. No license granted pursuant to this provision shall be effective for more than one year and any such license may be for such shorter period of time as the Director may prescribe. The Director may also prescribe regulations under which the basket may be operated for the particular purposes herein named not inconsistent with the provisions of this section. If in the operation of these baskets any fish other than catfish or carp are caught the licensee shall put these back in the water. The Director may also when, in his opinion, these destructive fish have

become so reduced in number as not to hinder materially the multiplication of fish of more desirable kind discontinue the granting of such licenses.

1950 (46) 2037; 1952 (47) 2890.

Effect of amendment.—The amendment affecting the second sentence of this section substituted the Director for the former Chief Game Warden. See, as possibly tion, the last sentence of § 28-573.2.

§ 28-574. Same; exception for use of trotlines for catching non-game fish.

Notwithstanding the provisions of § 28-572, trotlines may be used for catching non-game fish in such waters if a non-game permit is secured from the game warden. In the application for such permit the applicant shall state the area in which he wishes to place his trotlines. Any such permit for the use of trotlines shall be granted only for the calendar year in which issued. The game warden shall issue a metal tag for each trotline, with some distinguishing marking thereon, which shall be attached to the trotline. These trotlines shall be plainly marked by means of a float or other device, whereby they may be found and checked by officers charged with enforcement of the law. No trotline shall have more than fifty hooks, which shall be baited with cut bait or dough balls. The director is authorized to make rules and regulations in the use of trotlines not inconsistent herewith. There shall be no charge for a permit for split baskets.

1953 (48) 389.

§ 28-574.1. Same; penalty.

Any person violating any of the provisions of §§ 28-572 to 28-574 shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment for not less than ten days nor more than thirty days.

1952 (47) 2179.

§ 28-575. Certain methods of catching fish prohibited in Colleton County.

It shall be unlawful to catch non-game fish of any kind, except shad and sturgeon, within the limits of fresh water rivers and streams of *Colleton* County except by hook and line, the term hook and line including the use of fly rods and equipment attached, casting rod and equipment attached and live and artificial bait. The tickling, pegging, trapping, seining, netting, gigging and graining of non-game fresh water fish, except shad and sturgeon, is strictly prohibited within the fresh water rivers and streams of *Colleton* County except that mudfish, catfish, carp, garfish, suckfish and all other non-game fish may be taken with a gig. Any violation of this section shall be punishable upon conviction by fine not exceeding one hundred dollars or imprisonment not exceeding thirty days.

1950 (46) 2506; 1951 (47) 124; 1952 (47) 2179.

Effect of amendment.—The amendment game fish, game fish being covered by § limited the operation of this section to non- 28-570.

§ 28-576.1. When closed season declared on clear water streams.

The Director shall declare a closed season for a period of not more than sixty days at any one time on fish in any clear water stream in this State on the written recommendation of the Senator and at least one-half of the representatives from any county in which such clear water stream may be situated. Any person who shall take fish from any such stream during any such closed season shall, upon conviction, be fined not less than fifty dollars, nor more than one hundred dollars, or imprisoned for not less than thirty days.

1952 (47) 2179.

§ 28-576.2. Notice of such closed season.

The Director shall give notice of the closed season so declared by publication in at least two daily newspapers, including a newspaper in the county or counties in which the closed season is declared, if such counties have newspapers therein, stating therein the length of the period of such closed season.

1952 (47) 2179.

§ 28-576.3. Prima facie evidence of violation.

Any person found fishing with hook and line or in any other manner whatsoever within the restricted territory during a closed season so declared shall be prima facie guilty of violating the provisions of § 28-576.1, regardless of whether he shall have caught any fish or not.

1952 (47) 2179.

§§ 28-577 to 28-579. Closed season on clear water streams.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-576.1 to 28-576.3.

§ 28-589. Laws regulating fishing in clear and fresh water streams applicable to Lake Murray.

For the purposes of fishing in and taking fish of any kind from that certain body of water situate within the State and known as "Lake Murray" said body of water shall be deemed fresh and clear water and all laws pertaining to and regulating fishing and prohibiting the trapping of fish in the inland, clear or fresh water streams of this State are hereby made applicable to Lake Murray except as provided in § 28-596. The waters of Lake Murray herein referred to shall include, in addition to the main body of said lake, all the back waters therefrom reaching and extending to highwater mark when the lake is filled to its capacity.

1942 Code § 1775-1.1.; 1939 (41) 435; 1954 (48) 1766.

Effect of amendment.—The amendment added "except as provided in § 28-596" at end of first sentence.

Cross reference.—See § 28-596 for use of baskets and trot lines to catch non-game fish in Lake Murray.

§ 28-589.1. Daily limits of game fish.

It shall be unlawful for any person in any one day to catch more than eight bass or rock fish or more than twenty game fish, other than bass or rock fish, from the rivers, lakes and streams in this State. Any person violating the provisions of this section shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not exceeding thirty days.

1952 (47) 2179.

§ 28-590. Daily limits of game fish.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-589.1.

§ 28-592. Limits for part of Clarendon County.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-593.1. Limits on size of fish taken from certain lakes in Game Zone No. 2.

It shall be unlawful for any person to take and bag a bass less than ten inches in length or any other game fish less than six inches in length from any of the waters mentioned in § 28-593. The measurements herein provided for shall be made from the tip of the head to the tip of the tail.

1952 (47) 2179.

§ 28-593.2. Penalty for violating §§ 28-593 or 28-593.1.

Any person violating any of the provisions of §§ 28-593 or 28-593.1 shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment for not less than ten days nor more than thirty days.

1952 (47) 2179.

§ 28-594. Limit on size of flat fish caught in Prestwood Lake, Darlington County.

It shall be unlawful to catch and carry away any flat fish under six inches in length in Prestwood Lake, in *Darlington* County.

1942 Code § 1806-2; 1939 (41) 534; 1952 (47) 2179.

Effect of amendment.—The amendment by § 28-589.1) and provisions with respect eliminated a bag limit on flat fish (covered to trout (covered by §§ 28-589.1 and 28-591).

§ 28-596. Use baskets and trot lines to catch non-game fish in Lake Murray; non-game fish tag required.

Baskets designed to catch non-game fish may be used for catching non-game fish in that body of water known as Lake Murray. The director of the Division of Game shall specify the design and type basket that may be used. Trot lines may also be used in Lake Murray for catching non-game fish, if they are baited only with cut bait, dough balls or corn. No trot line may have more than one hundred hooks. Before either a trot line or a basket is used in these waters a non-game fish tag must be secured from the game warden or an agent of the Division of Game at a cost of one dollar per tag. Each such non-game fish tag shall be good for only the calendar year in which issued. Each basket or trot line shall have a non-game fish tag attached thereto and shall be plainly marked by means of a float or other device, so that it may be found and checked by officers charged with enforcement of the law. No game fish, or fishing tackle used to catch game fish shall be in possession of any person while fishing trot lines or baskets.

1954 (48) 1766.

§ 28-597.1. Owners of ponds must have permit to catch fish therein for propagation.

Persons owning private ponds in this State are allowed to catch fish therein with traps or nets for propagation purposes only after the issuance of a permit from the Director. The Director may issue such rules and regulations as in his judgment may be proper concerning the issuance of such permits, the length of time that each permit will be of force and the conditions on which they shall be issued. He shall have full power to revoke such permits in his discretion. No permit shall be issued except it be endorsed in writing by a game warden in the county in which it is to be used.

1952 (47) 2179.

§§ 28-598 to 28-600. Fishing in private ponds or on banks of navigable streams.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-8.1 and 28-597.1.

ARTICLE 3.

Seines, Traps, Obstructions in Streams, etc., Generally.

§ 28-610. Use of nets, traps or other devices to catch non-game fish.

Gill nets (not to extend more than halfway across a stream, lake or pond) traps, seines, trotlines or other devices which do not block the passage of fish in streams may be used only in the muddy streams, creeks and inland waters of the State for the purpose of catching non-game fish.

1952 (47) 2179.

§ 28-610.1. Same; closed period from Saturday evening to Wednesday morning.

There shall be a closed time in all the muddy streams, creeks and inland waters of the State from the setting of the sun each Saturday until the rising of the sun each Wednesday, during which time all seines, nets or other plans or devices for the stoppage or collecting of fish, which obstruct any portion of any such stream, creek or inland water, shall be removed from such creek, stream or inland water.

1952 (47) 2179.

§ 28-610.2. Sections inapplicable to dip nets or skim-bow nets used by hand.

Nothing contained in § 28-610 or § 28-610.1 shall apply to fishing with dip nets or skim-bow nets used by hand for the purpose of catching non-game fish.

1952 (47) 2179.

§ 28-610.3. Penalty.

Any person using a seine, net, plan or device other than as permitted under §§ 28-610 and 28-610.1 shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars or be imprisoned for a period of not more than thirty days.

1952 (47) 2179.

§ 28-610.4. Forfeiture of seines, etc., illegally used.

Whenever any seine, net or other plan or device for the stoppage or collecting of fish, contrary to law, shall be used, any game warden or any law enforcement officer may, in the name of the State, seize and hold such seine, net, plan or device for the stoppage or collecting of fish and use it as evidence for the purpose of convicting any person violating the provisions of § 28-610 or § 28-610.1. Upon conviction of any person so using such seine, net, plan or device for the stoppage or collecting of fish, the same shall be forfeited to the State and sold and the proceeds of such sale shall be transmitted to the credit of the Game Protection Fund.

1952 (47) 2179.

§§ 28-611, 28-612. Use of seines, etc.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-610 to 28-610.4.

§ 28-616.1. Use of net or seine in clear waters of Clarendon County prohibited.

It shall be unlawful to use any net or seine in any of the clear waters of *Clarendon* County at any time. The term "*waters*" as used in this section includes rivers, lakes and streams and any tributaries thereof. Any person who violates the provisions of this section shall, upon conviction, be punished by a fine of not less than twenty-five dollars or by imprisonment for not more than thirty days. For a second or subsequent offense the offender shall be punished in the discretion of the presiding judge of the court of general sessions.

1952 (47) 1938.

§§ 28-618 to 28-623. Use of seines, etc., in certain counties.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—As to Clarendon County, see § 28-616.1.

§ 28-624. Shooting of fish in certain counties.

It shall be unlawful for any person to shoot fish in any of the streams, lakes or rivers or their tributaries (both muddy and clear water streams, inclusive) in the counties of *Bamberg*, *Berkeley*, *Charleston* and *Dorchester* at any time during the year.

1949 (46) 580; 1952 (47) 2179.

Effect of amendment.—The amendment eliminated certain provisions relating to seines, etc.

§§ 28-625 to 28-638. Use of seines, etc., in certain counties.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-639.1. Taking fish from trap or net.

Any person who shall take and carry away from any fish trap or net in the waters of this State any fish caught and being in such trap or net, with intent to defraud and deprive the owner or owners of such trap or net of such fish, shall be guilty of a misdemeanor and, on conviction thereof, shall be punished for such offense by fine not exceeding two hundred dollars and imprisonment not exceeding six months.

1952 (47) 2179.

§§ 28-640 to 28-647. Fish traps; obstruction of fish; South Carolina side of Savannah river; penalties.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—As to § 28-640 (stealing fish from trap), see § 28-639.1.

§ 28-648.1. Permanent obstruction to migration of fish.

No permanent obstruction of any kind or nature whatever, other than a dam for manufacturing purposes, shall be placed in any of the inland creeks, streams or waters of the State so as to obstruct the free migration of fish. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof before any court of competent jurisdiction, shall be fined in the sum of two hundred dollars or imprisoned for a period of not less than three or more than six months or both, in the discretion of the court trying the case. Whenever any such permanent obstruction shall be found, any warden or law enforcement officer may, in the name of the State, destroy or take down such obstruction or so much thereof as is necessary to permit again the free migration of fish.

1952 (47) 2179.

§§ 28-649 to 28-652. Obstructions, seines, etc.

Repealed by A. & J. R. 1952 (47) 2179.

§ 28-654. Designation of fish sluices; obstruction thereof.

It shall be the duty of the governing body of the county to designate the fish sluices on the several rivers so as to leave one or more passages for fish up such rivers. Such sluices shall be sixty feet wide or, where there are two or more such sluices, they shall be, together, sixty feet wide. When they shall be so designated, it shall be lawful for any person to open such sluices. If any person shall obstruct any such sluice, when once opened, so as to prevent the free passage of fish up such sluice, and every part thereof, he shall be guilty of a public nuisance and, on conviction thereof in the court of general sessions, shall be fined one hundred dollars and shall stand committed until such fine be paid for a time not exceeding ten days, at the discretion of the court before which such conviction may take place. Whenever a fish sluice in any of the rivers aforesaid shall have been designated as aforesaid, any stoppage of such sluice shall be regarded as a public nuisance and may be abated as such.

1942 Code § 1772-8; 1932 Code §§ 1821, 3416; Civ. C. '22 § 1032; Cr. C. '22 § 790; Civ. C. '12 § 3434; Cr. C. '12 § 773; Civ. C. '02 § 2348; Cr. C. '02 § 520; G. S. 1672; R. S. 406, 1849; 1827 (6) 340; 1837 (6) 569; 1879 (17) 74; 1890 (20) 705; 1934 (38) 1415; 1952 (47) 2179.

Effect of amendment.—The amendment eliminated a provision that one-half of the fine should be paid into the State Treasury.

ARTICLE 3.1.

Special Provisions for Game Zone No. 7.

§ 28-664.1. Exceptions for certain gill nets.

Notwithstanding the provisions of §§ 28-661 to 28-664, but subject to the closed time limitations set forth in § 28-610.1, gill nets of a size no smaller than four and one-half inch stretch mesh may be used in Game Zone No. 7 during the months of November, December, January and February.

1953 (48) 214; 1954 (48) 1495.

Effect of amendment.—The amendment changed mesh measurement from knot to added the closed time limitations and knot to stretch.

§ 28-664.2. Exception for Florence County.

Notwithstanding the provisions of §§ 28-661 to 28-664, the use and possession of set hooks shall be lawful in *Florence* County when only cut bait (as distin-

guished from live bait) is used and when no hook smaller than a No. 3 hook is used.

1952 (47) 2220.

§ 28-666. Confiscation of fish nets, traps, etc.

The game wardens shall confiscate and destroy all fish nets (shad, herring, shrimp and prawn nets, as permitted by law, excepted), fish traps, seines, trot lines and set hooks in Game Zone No. 7, except when the use, sale or possession thereof is lawful under the terms of this article.

1951 (47) 244; 1952 (47) 2220.

Effect of amendment.—The amendment added the exception at the end of the section.

§ 28-667. Fishing for catfish.

The provisions of this article shall not apply to fishermen fishing for catfish below the forty-mile limit established by the Commercial Fisheries Advisory Board when the fishermen obtain from the county game warden in the county in which they propose to fish a license to set traps for catfish and pay to the game warden the sum of one dollar for each trap and each such trap shall be baited with shrimp or menhaden.

1951 (47) 244; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-667.1. Possession of fish in excess of legal limits.

Any person in Game Zone No. 7 having in his possession on any lake, stream, river, or their tributaries, going to or coming from such lake, stream, river, or their tributaries, in the fields or woods or going to or coming from the fields or woods any fish in excess of the limits set out in this article or in any State law shall be presumed to have killed or caught such fish.

1952 (47) 2179.

ARTICLE 4.

Pollution, Poisoning, etc., of Streams; Dynamiting.

§ 28-671.1. Poisoning waters, etc., to catch fish.

It is unlawful to poison the streams or waters of the State in any manner whatsoever for the purpose of taking fish or to introduce, produce, or set up electrical currents or physical shocks, pressures or disturbances therein for the purpose of taking fish. The muddying of streams or ponds or the introduction of any substance which results in making the fish sick, so that they may be caught, is hereby declared to be poisoning in the sense of this section. No sawdust, acid or other injurious substance shall be discharged into any of the streams of the State where fish breed or abound. For a violation of this section the person so violating it shall be fined not less than twenty-five dollars nor more than one hundred dollars or be imprisoned for not less than one day nor more than thirty days.

1952 (47) 2179.

§ 28-672. Poisoning waters, etc., to catch fish.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-671.1.

§ 28-673.1. Using explosives to take fish.

It shall be unlawful for any person to use dynamite, gun powder, lime or any other explosive in or about any of the streams or waters in this State to take or secure fish, to cause or to procure the same to be done or to aid, assist or abet anyone in so doing or to have in his possession dynamite or any other explosive or explosive device in any paddling boat, sail boat, motor boat, raft or barge usually used for fresh water fishing in any of the rivers, lakes, streams or waters within this State. Any person using explosives for the taking of fish

or having in his possession explosives in a paddling boat, motor boat, sail boat, raft or barge commonly used for fresh water fishing in any of the rivers, lakes, streams or waters within this State shall be guilty of a misdemeanor and upon his conviction shall be sentenced to serve a term at hard labor on the chain gang or in the penitentiary or to pay a fine as follows, to-wit: for the first offense a period of not more than three months or a fine of not more than five hundred dollars; for the second offense a period of one year or a fine of one thousand dollars; and for the third offense a period of two years or a fine of two thousand five hundred dollars.

1952 (47) 2179.

§ 28-673.2. Same; prima facie evidence of guilt.

If any person is found picking up fish within two hours after they have been killed, stunned or disabled by an explosive, it shall be deemed prima facie evidence that he used explosives to take fish from such waters.

1952 (47) 2179.

§ 28-673.3. Person convicted not to hunt or fish for period thereafter.

Any person convicted of violating any of the provisions of § 28-673.1 shall be prohibited from hunting or fishing within the State for a period of five years and both his hunting and fishing licenses, if either has been issued to him, shall be immediately revoked upon his conviction. Any person found fishing or hunting within the State who has been convicted of a violation of § 28-673.1 within such five year period shall be guilty of a misdemeanor and, upon conviction therefor, shall be fined or imprisoned, in the discretion of the court.

1952 (47) 2179.

§ 28-673.4. Failure to report dynamiting.

Any person who sees another violating any of the provisions of §§ 28-673.1 or 28-673.3 and who fails to report such violation to a game warden, sheriff or some other law enforcement officer, within the county where the violation occurred, within two weeks thereafter, shall be guilty of a misdemeanor and, upon conviction therefor, shall be fined or imprisoned, in the discretion of the court.

1952 (47) 2179.

§ 28-673.5. Informers not subject to suit for slander, etc.

Any person who shall swear out a warrant, give information or testify as a witness against anyone for violating § 28-673.1, § 28-673.3 or § 28-673.4 shall not be subject to a criminal prosecution for slander or malicious prosecution, neither shall he be subject to a civil action for damages in any court of competent jurisdiction for any alleged damages to the person so accused growing out of or in connection with such use of explosives.

1952 (47) 2179.

§§ 28-674 to 28-677. Using explosives to take fish.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-673.1 to 28-673.5.

ARTICLE 5.

Sale or Traffic in Fish.

§ 28-690. Sale or traffic in game fish and certain other fish.

It shall be unlawful, at any time, to sell, offer for sale, barter or traffic in fresh water game fish caught in the State or to sell, offer for sale, barter or traffic in black bass, bream, red breast or trout regardless of where caught. Any violation of this section shall be punishable by a fine of not less than fifty dollars or more than one hundred dollars and imprisonment of not less than ten or more than thirty days.

1952 (47) 2179.

§ 28-691. Sale or traffic in certain game fish.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-690.

§ 28-692. Same; other game fish.

It shall be unlawful for anyone to sell game fish exempt from the provisions of § 28-690 during the months of April, May and June of each year; *provided, however*, nothing contained in this section shall be construed to apply to any such game fish shipped into this State from a point without the State nor to a person taking fish from a private pond. Any person violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars nor less than twenty-five dollars or imprisoned for not less than ten nor more than thirty days, for each and every violation hereof.

1942 Code § 1773-3; 1932 Code § 1800; 1928 (35) 1179; 1932 (37) 1480; 1952 (47) 2179.

Effect of amendment.—The amendment changed the reference from § 28-691, now repealed, to § 28-690.

§ 28-692.1. Sale of game fish caught from certain artificial lakes in Game Zone No. 2; confiscation of illegal devices.

It shall be unlawful to sell or offer for sale any game fish caught from the waters of any artificial lake having an area of ten thousand acres or more within Game Zone No. 2 that has its dam site in said zone, from any of the tributaries upstream of any such lake for a distance of one mile above where the water ceases to flow or from Boyd's Mill Pond in *Laurens* County.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment of not less than ten days or more than thirty days.

1952 (47) 2179.

§ 28-692.2. How owner may draw private pond and dispose of fish caught.

It shall be lawful for the owner of any private pond, in the presence of and under the supervision of a representative of the Division of Game, to draw such pond and dispose of the fish caught at such drawing, by sale or otherwise. But any fish sold must be sold and disposed of at the site of such pond in the presence of a representative of the Division of Game.

1952 (47) 2179.

§ 28-693. Drawing of ponds.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-692.2.

§ 28-697. Disposition of fines and proceeds of forfeitures.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-12.1.

ARTICLE 6.*Fish Hatcheries and Fish Sanctuaries; Propagation.***§ 28-710.1. Acquisition of land for fish hatcheries.**

The Commission may acquire a sufficient number of acres of land in close proximity to any dam, artificial lake, impounded water or stream for the purpose of establishing fish hatcheries or fish nurseries. In order to carry out the purposes of this section the same power and authority of condemnation is hereby conferred upon the Commission that has been heretofore conferred on State agencies under chapter 2 of Title 25.

1952 (47) 2179.

§ 28-710.2. Same; for United States fish hatcheries.

The Commission may lease or purchase a suitable number of acres of land in this State for the purpose of allowing the United States fisheries to establish thereon fish hatcheries. The expense of leasing or buying such lands and the protection and distribution shall be paid out of the game protection fund.

1952 (47) 2179.

§§ 28-711 to 28-714. Acquisition of lands for hatcheries and funds for hatcheries in certain counties.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-710.1, 28-710.2.

§ 28-715. Distribution of fish raised in hatchery in Greenville County.

The distribution of fish raised in the hatchery on the lands donated in *Greenville* County by J. Harvey Cleveland shall be under the direction and supervision of the Director or his duly authorized deputies.

1942 Code § 1812; 1932 Code § 3295; 1931 (37) 309; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Director for the former Chief Game Warden.

§ 28-715.1. Establishment of fish sanctuaries.

The Director of the Division of Game shall, without any cost to the State whatsoever, designate and establish sanctuaries where fish may breed unmolested in the manner and subject to the provisions herein.

1952 (47) 2179.

§ 28-715.2. Designation in rivers and streams.

The Director of the Division of Game may select any place upon any river or stream within this State as a fish sanctuary. Upon making such selection the Director, upon approval in writing of a majority of the members of the county legislative delegation from the county or counties in which such proposed fish sanctuary is to be located, may designate and set apart such place as a fish sanctuary. No one sanctuary shall exceed two miles in length along any river or stream. When such sanctuary shall be so designated and set apart, the Director shall have it adequately and conspicuously marked and shall designate the limits thereof in all directions.

1952 (47) 2179.

§ 28-715.3. Designation in lakes and ponds.

Any such sanctuary may be set apart in any lake or pond upon condition that the landowner shall enter an agreement with the Director to set aside and turn over to the State for such purpose such lake or pond.

1952 (47) 2179.

§ 28-715.4. Effect of such establishment.

When a fish sanctuary is so established, whether upon the approval of the county legislative delegation or by agreement with landowners in the case of private property, such establishment shall be effective for a period of five years from the date of such approval or agreement and there shall be no fishing or trespassing upon any waters so established as a sanctuary. The Director may post such territory so designated as a sanctuary, in the name of the State, and may prosecute any person fishing or trespassing thereon.

1952 (47) 2179.

§ 28-715.5. Penalties for violation of such sanctuaries.

Any person fishing or trespassing upon any property or waters so established as a sanctuary by the Director shall be guilty of a misdemeanor and upon con-

viction thereof shall be punished by a fine of not exceeding two hundred dollars or by imprisonment for not more than six months.

1952 (47) 2179.

§§ 28-716 to 28-720. Establishment of fish sanctuaries, etc.

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now §§ 28-715.1 to 28-715.5.

§ 28-721. Sanctuary in Little Pee Dee Swamp.

There is hereby created and established a fish sanctuary in a portion of the streams or waters on each side of the highway in Little Pee Dee River Swamp in *Marion* County near Gallivant's Ferry.

It shall be unlawful for any person to fish, seine, net or otherwise enter upon or trespass upon so much of the streams or waters in Little Pee Dee River Swamp in *Marion* County, near Gallivant's Ferry, as lie along and on each side of the highway leading from Little Pee Dee River Bridge in a generally north-westerly direction to *Marion* for a distance of approximately one and seven tenths miles to the first curve on the highway northwest of the bridge. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or imprisonment of not less than fifteen nor more than thirty days.

1942 Code § 1820-1; 1938 (40) 1825; 1946 (44) 1318; 1953 (48) 257.

Effect of amendment.—The amendment omitted an exception for persons fishing limited the area of the sanctuary and with hook and line.

CHAPTER 8.

COASTAL FISHERIES LAW

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28-989. Revocation of permit.

ARTICLE 1.*General Provisions.***§ 28-753. Chapter not applicable in fresh waters.**

Shad laws, §§ 28-881 et seq., are exceptions to this section. Atty. Gen. Op., Apr. 7, 1954.

§ 28-757. Board may require permits for taking of fish.

The Commercial Fisheries Advisory Board may by its rules and regulations prescribe for permits to be held by all persons actually engaged in the taking of fish in the waters of this State and provide such punishment for persons failing to secure such permits for themselves or those working under their authority as in the judgment of the Board may seem proper, not to exceed forfeiture of license.

1942 Code § 3365; 1932 Code § 3365; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-758. Erection of signs without authority.

It shall be unlawful for any person without authority from the Commercial Fisheries Advisory Board first had and obtained as provided by this chapter to set up, erect or use any sign purporting to be the sign of leased planting ground or of restricted area as required of lessees of bottoms or of the Board and any person so offending shall be guilty of a misdemeanor and punished by fine or imprisonment in the discretion of the court of general session.

1942 Code § 3360; 1932 Code § 3360; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-759. Injury to signs, boats, etc., a misdemeanor.

Any person removing, injuring, defacing or in any way disturbing the signs, buoys or other appliances used by the Commercial Fisheries Advisory Board in

marking restricted areas or bottoms or used by lessees of bottoms in marking the leased areas or who shall injure or destroy any boat or property of any kind used by the Board or any employee thereof shall be guilty of a misdemeanor and punished by fine or imprisonment in the discretion of the court trying such person.

1942 Code § 3358; 1932 Code § 3358; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-761. Punishment for certain violations of chapter.

Any person violating any of the provisions of this chapter for which no punishment has been specially provided shall be punished by a fine not exceeding one thousand dollars or imprisoned not exceeding six months, in the discretion of the court. But the Division of Commercial Fisheries may, in its discretion, prosecute for such violations in the original jurisdiction of the magistrate's court by special request in writing endorsed upon the warrant that the magistrate's court shall assume such jurisdiction, whereupon, in the event of conviction in such court, the magistrate shall impose sentence of a fine not exceeding one hundred dollars or imprisonment not exceeding thirty days.

1942 Code § 3407; 1932 Code § 3407; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries. **Cited in** *Shipman v. Du Pre*, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

ARTICLE 2.

Shellfish Generally.

§ 28-772. Protection of beds planted by Division.

The Division of Commercial Fisheries may plant beds of shellfish and prohibit the gathering of shellfish therefrom by suitable marks, signs and advertisements to that effect and during the period of such prohibition and while such beds are so marked it shall be unlawful for any person to take shellfish therefrom.

1942 Code § 33-52; 1932 Code § 3352; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-773. Sanitary conditions of beds and plants.

The Commercial Fisheries Advisory Board and the State Board of Health shall determine, inspect and control the sanitary conditions of all beds on which shellfish are grown and inspect and control as to sanitary operation all shucking plants or plants where shellfish are packed or otherwise prepared. It shall also provide a method of identification in the form of a certificate number that will make plain the source of the shellfish in every container. No such certificate number may be used as an advertising medium unless the beds from which the shellfish have been taken and the plants in which they have been shucked or packed have been passed on by a representative of the State Board of Health. The method of storing and shipping shellfish shall be supervised, inspected and controlled by the State Board of Health and the Commercial Fisheries Advisory Board. The penalty for unlawfully advertising oysters or shad, including the certificate of the State Board of Health, shall be a fine of not less than one thousand dollars. The State Board of Health shall see to it that the product of all such packing or preparing plants conforms to the proper standards for salinity of water content and food proportion, to the pure food laws standards and to an established, bacterial standard. The expense of the representative of the State Board of Health in getting to and from beds, shucking plants and packing houses in order to inspect them shall be borne by the owner of the bed, shucking plant or packing house.

1942 Code § 3393; 1932 Code § 3393; 1924 (33) 1016; 1925 (34) 225; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

ARTICLE 3.

*Provisions Relating to Both Oysters and Clams.***§ 28-781. Closed season for oysters and clams.**

It shall be unlawful for any person to remove oysters from the beds between the first day of May and the first day of October of each year or clams between the first day of May and the first day of August of each year. But nothing in this section shall prevent the removal of oysters by the Commercial Fisheries Advisory Board or under permits granted by them for the purpose of replanting that place or places designated by them. Possession of oysters or clams during the closed season above provided shall be prima facie evidence of violation of the provisions of this section.

1942 Code § 3351; 1932 Code § 3351; 1924 (33) 1016; 1930 (36) 1320; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

ARTICLE 4.

*Provisions Relating to Oysters Only.***§ 28-791. Ownership of oyster beds.**

For the purpose of this chapter all of the bottoms within the jurisdiction of this State contained between high-water mark and one foot below ordinary low-water mark shall be deemed and considered as oyster beds and the Commercial Fisheries Advisory Board may lease all or part thereof as it may determine and no grant, lease or conveyance hereafter made, except it be a special grant by the General Assembly, shall be effective to convey any private ownership or control of any fishing or fisheries therein.

1942 Code § 3329; 1932 Code § 3329; 1924 (33) 1016; 1936 (39) 1644; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-794.1. Same; section inapplicable to certain areas in Horry County.

The provisions of § 28-794 are not applicable to the areas of the Cherry Grove Beach Development Company and the East Cherry Grove Realty Company, in Horry County, as defined in Act No. 615 of the Acts and Joint Resolutions of 1933 (Acts 1933, p. 1168) and Act No. 476 of the Acts and Joint Resolutions of 1953 (Acts 1953, p. 1003), respectively.

1954 (48) 1473.

§ 28-795. Planting of Japanese seed oysters.

It shall be unlawful for any person to plant Japanese seed oysters within this State without first procuring permission from the Commercial Fisheries Advisory Board so to do. Any person violating the provisions hereof shall upon conviction be fined not less than six hundred dollars or imprisoned for not less than six months, in the discretion of the court.

1942 Code § 3415; 1933 (38) 347; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-797. Nonstandard measures.

All bushel, half-bushel or peck measures found at any place where oysters are purchased or sold in the shell which do not conform in shape and contents to standards established by § 28-796 shall be destroyed by the Division of Commercial Fisheries or its authority. Any person who shall buy or sell oysters in the shell using a bushel, half-bushel or peck measure which does not conform to such standards as to contents shall be deemed guilty of a misdemeanor, and, on conviction,

shall be punished for each offense by a fine of not less than ten dollars nor more than fifty dollars or by imprisonment of not more than thirty days.

1942 Code §§ 3370, 3371; 1932 Code §§ 3370, 3371; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-800. Oyster farm in Charleston County.

The governing body of *Charleston* County may, in conjunction with the Division of Commercial Fisheries, utilize and employ not exceeding one hundred acres of shores and bottoms in said county belonging to the State and not now leased for the purpose of planting and propagating oysters and operating an oyster farm for the benefit of the residents of said county. The one hundred acres so used shall be composed of not more than two separate areas and shall be located as far from any canning factory now in operation as a convenient location or locations in the county can be found. Such oyster farm shall be operated under such regulations as shall be promulgated by the governing body of the county. Any person wilfully trespassing on or removing oysters from such area for commercial purposes shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not exceeding fifty dollars or imprisonment of not exceeding thirty days.

1942 Code § 3421-1; 1938 (40) 1708; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

ARTICLE 5.

Leases of Shellfish Bottoms.

§ 28-811. Authorization.

It shall be lawful for the Commercial Fisheries Advisory Board to lease to any person portions of the bottoms for the purpose of oyster culture, not exceeding an aggregate of one thousand acres to any person for a term not exceeding five years. Any such lease shall be renewed at the option of the lessee for an additional term of five years at the rate of rental of one dollar per acre per year for the renewal period.

1942 Code § 3332; 1932 Code § 3332; 1924 (33) 1016; 1936 (39) 1644; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-814. Notice of application.

Upon the filing with it of the application approved by the Director of the Division of Commercial Fisheries and the plat of the territory so approved, the Board shall cause to be published in a newspaper in which legal advertisements by the sheriff are published in the county wherein the territory applied for is located, a notice to all persons of the application for such bottoms for planting and propagation of oysters, giving the name of the applicant, a sufficient description of the bottoms applied for to enable them to be located and the day on which the Board will pass upon objections to the granting of such lease. Such advertisement shall be published once a week for three weeks immediately preceding such date.

1942 Code § 3338; 1932 Code § 3338; 1924 (33) 1016; 1936 (39) 1644; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Director of the Division of Commercial Fisheries for the former chief inspector or district inspector.

§ 28-822. Plantings required of lessees.

Lessees of bottoms for the planting and propagation of oysters shall plant or distribute on the leased bottoms at least one hundred bushels of shell or seed oysters per oyster bottom acre each year during the term of the lease. Such planting shall be under the direction of the Commercial Fisheries Advisory Board. The amount of seed oysters or shell required to be planted by this section shall be in addition to the amount of shell required to be planted by § 28-845.

1942 Code § 3343; 1932 Code § 3343; 1924 (33) 1016; 1945 (44) 319; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-823. Gathering seed oysters for planting.

Lessees of bottoms are permitted to gather seed oysters for replanting on their own leased lands from the public beds of the State which may be designated from time to time by the Director of the Division of Commercial Fisheries for the purpose, but such oysters for replanting must be gathered during the open season for oysters or during the time immediately thereafter not later than June 1st in any year.

1942 Code § 3344; 1932 Code § 3344; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment of Commercial Fisheries for the former substituted the Director of the Division chief inspector or assistant inspectors.

ARTICLE 6.*Canning and Shucking Plants.***§ 28-841. Period of operation of plants.**

Canneries shall not commence operation before October first of each year and both canneries and raw shucking plants shall cease operation on May fifteenth. But the Commercial Fisheries Advisory Board may, in its discretion, require the operations to cease not later than April first or to commence no earlier than October thirty-first.

1942 Code § 3361; 1932 Code § 3361; 1924 (33) 1016; 1925 (34) 225; 1929 (36) 163, 213; 1952 (47) 2890.

Effect of amendment.—The amendment of Commercial Fisheries Advisory Board for the former State Board substituted the Commercial Fisheries Advisory Board of Fisheries.

§ 28-842. Premises, utensils, etc., used for shucking to be kept sanitary.

All premises, sheds, utensils, measures, tools and implements used on premises of shucking plants must be kept in sanitary condition and to that end the Commercial Fisheries Advisory Board may prescribe such rules and regulations for sanitation and provide for such inspections as in its judgment may be advisable and may for persistent violations of such sanitary rules and regulations revoke the licenses of the persons violating them.

1942 Code § 3368; 1932 Code § 3368; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment of Commercial Fisheries for the former State Board substituted the Division of Commercial Fisheries.

§ 28-843. Conduct of shucking for market; records.

All persons engaged in shucking raw oysters or claims for market shall conduct such shucking in sheds at places and of a construction approved by the Commercial Fisheries Advisory Board and all oysters shucked in such sheds must be measured and a record kept by such persons showing the number of bushels of oysters in the shell shucked and the quantity in quarts shucked therefrom. At the end of each month every such person shall make a report showing such dates. The reports must be delivered or mailed on or before the fifth day of each succeeding month.

1942 Code § 3366; 1932 Code § 3366; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment of Commercial Fisheries for the former State Board substituted the Commercial Fisheries Advisory Board of Fisheries.

§ 28-844. Purchases of shucked oysters.

All persons engaged in shucking raw oysters for market who shall purchase oysters previously shucked shall show such purchases separately on their records and on their monthly reports. No person engaged in shucking raw oysters for market shall be permitted to purchase shucked raw oysters from other than persons regularly engaged to shuck them on premises and in sheds provided for that purpose and approved by the Commercial Fisheries Advisory Board.

1942 Code § 3367; 1932 Code § 3367; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment of Commercial Fisheries for the former State Board substituted the Commercial Fisheries Advisory Board of Fisheries.

§ 28-845. Planting of oyster shell by canneries, etc.

The person in charge of each canning factory or raw shucking plant in this State shall each year distribute upon such bottoms as shall be designated by the Commercial Fisheries Advisory Board or its authority and in the manner required by it a quantity of oyster shells not exceeding thirty-three and one-third per cent of the quantity acquired by such cannery or raw shucking plant during the preceding open season. Such distribution or replanting shall be done under the direction or supervision of the board of fisheries within a radius of twenty miles from such factory or shucking plant and before the first day of June. Any failure to comply with this section shall subject the cannery or shucking plant to revocation of license and the person offending shall be punished by fine of not less than one hundred dollars or imprisonment of not less than one nor more than six months.

1942 Code § 3356; 1932 Code § 3356; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-846. Purchase of shell by Division for replanting.

The Division of Commercial Fisheries shall have the right from the end of each open season to the commencement of the next open season to purchase shells from the canning factories and raw shucking plants for replanting in the waters of this State; such shells shall be purchased at the prevailing market price and in the event of disagreement as to what is the prevailing market price such price shall be fixed by arbitration or condemnation proceedings at the option of the seller. But such purchases shall not be made so as to interfere with the compliance by such canneries and shucking plants with the requirements of law as to replanting, shall not extend to shells accumulated from any season other than the one immediately preceding such purchases and shall not interfere with the business necessities of such canneries or shucking plants in providing space or grounds for their own operations.

1942 Code § 3353; 1932 Code § 3353; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-847. Records to be kept by canneries.

All managers or other persons in charge of oyster canning factories shall be required under a penalty of not less than one hundred dollars for each infraction of this requirement to keep a book of such size and description as may be prescribed by the Commercial Fisheries Advisory Board in which shall be entered:

(1) The name of each person from whom he shall purchase oysters in the shell, together with the date of each such purchase and the quantity so purchased; and

(2) Under appropriately headed columns the name, rig, state license number and approximate tonnage of the boat in which the oysters were brought to the factory.

They shall also in the same or another book of size and description to be prescribed by said Board keep a record of (a) the quantity of oysters purchased each day in bushels; (b) the quantity in ounces canned each day; and (c) the quantity in ounces shipped each day with the destination and manner of such shipment and the name of the carrier. They shall also retain duplicates of the bills of lading on file for comparison with such books. Such books or records and bills of lading shall be open at all times to the inspection of the Board or its agents or the Comptroller General or his agents.

1942 Code § 3362; 1932 Code § 3362; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-848. Reports of canneries.

All managers or other persons in charge of oyster canning factories shall make a written report to the Division of Commercial Fisheries not later than the fourth

day of each calendar month containing in itemized form the information contained in the books required to be kept by § 28-847. They shall also within the first six days of May in each year make a report to the Division of the quantity of canned oysters and stamps of each denomination on hand on the first day of May and of such other data as may be required by the Division,

1942 Code § 3362; 1932 Code § 3362; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

ARTICLE 7.

Shrimp and Prawn.

§ 28-861. Closed season on shrimp and prawn.

Constitutionality.—See *Shipman v. Du-Pre*, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

§ 28-862. Size of shrimp or prawn.

Constitutionality.—See *Shipman v. Du-Pre*, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

§ 28-864. Same; seaward boundary of St. Helena Sound for purpose of § 28-863.

For the purpose of § 28-863 the seaward boundary of St. Helena Sound shall be designated by lines through the following markers or points as they appear on U. S. Coast and Geodetic Survey Charts: the N. W. point of Harbor Island, government markers, A 11, A 9, A 7, A 5, A 4, A 2, A 1, F L. ev. 4 sec., C 1 black buoy and the N. W. point of Otter Island. The seaward boundary of Port Royal Sound shall be designated by a line from the north line of Station Creek, to Bay Point, not including the mouth of Station Creek, on the west side of Beaufort River from Marsh Island to Parris Point Blinker Buoy, from the Blinker Buoy along Parris Island south shore to Elliott Beach on Parris Island, from Elliott Beach in a southerly direction to the east point of Dawes Island to a point one mile west of the point, the line then extending southwesterly to the west point of Foote Point Marsh, then turning east along Foote Point Marsh across McKay's Creek along the north-shore line of Pinckney Island crossing Skull Creek to Hilton Head north-west point, then following Hilton Head north shore to the sea. Section 28-863 shall not be applicable to all of the Trenchards Sound with the exception of all creeks emptying into the sound, excepting Station River east mouth and any streams north of the line east from the northeast point of Eddings Island Marsh to the northwest point of Story River Marsh at the intersection of Story River Marsh and Trenchards Marsh. Nor shall it be applicable to all of Daufuskie Sound included within the line as is described herein, running north along Daufuskie Island to Haighs Point, crossing Cooper River to the southeast marsh point of Bulls Island, following the east side of Bulls Island Marsh to the south point of Marsh Island, crossing Daufuskie Sound to Long Point on Hilton Head Island, following the west side of Hilton Head Island to the sea. Section 28-863 shall not be applicable to the Sounds in Beaufort County during the months of September, October and November.

1953 (48) 394.

Sounds do not include tributary waters.—

The right to trawl for shrimp in Sounds of Beaufort County during months of September, October and November does not include tributaries, streams, bays, rivers and other bodies of water connected with the Sounds, and the division of such tributary waters from the Sounds should be the line at points of junction from headland to headland. Atty. Gen. Op., Sept. 8, 1954.

It is permissible to trawl for shrimp from the seaward boundary established by this section, and during the months of September, October and November there is no restriction on trawling in Sounds of Beaufort County. Atty. Gen. Op., July 20, 1953.

"This section" wherever appearing in Act of 1953, 48 Stat. 394, refers to § 28-863. Atty. Gen. Op., July 20, 1953.

§ 28-865. Registration numbers on licensed shrimp trawlers.

Every boat licensed by the Commercial Fisheries Advisory Board to trawl for shrimp in this State, at the time of the issuance of such license shall be assigned by the Board a number under which such boat shall be registered and operated. The number so assigned to any such boat shall be painted on each side of the cabin or deck house thereof in distinctive numerals at least two feet in height, with the barrel of the numerals four inches in width, and the paint used for such purpose shall be different from and in clear contrast in color to the boat on which applied so that such registration number may be easily and definitely determined at a great distance. Any person operating a boat licensed to trawl for shrimp without having the registration number affixed thereon as required by the terms of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or imprisoned for a period of not less than ten days nor more than thirty days for each and every such offense.

1942 Code § 3414-1; 1936 (39) 1385; 1937 (40) 378; 1952 (47) 2890.

Cross reference.—See § 28-877 for provision that boat licensed for either crab or shrimp trawling may do either or both. substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

Effect of amendment.—The amendment

ARTICLE 8.*Crabs.***§ 28-875. Penalties.**

Any person violating the provisions of §§ 28-873 or 28-874 shall be subject to a fine of not less than ten dollars nor more than one hundred dollars or imprisonment not to exceed thirty days, in the discretion of the court, and such packages, barrels or baskets containing illegal size crabs, and the entire contents thereof, shall be confiscated and become the property of the State to be disposed of in the discretion of the Commercial Fisheries Advisory Board.

1942 (42) 1686; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

§ 28-876. Trawling for crabs lawful at certain times and places.

It shall be lawful to trawl for crabs within the three-mile limit and in sounds and bays during the months of December, January, February and March of each year.

1953 (48) 375.

§ 28-877. Licenses for boats trawling for crabs.

The South Carolina Wildlife Resources Commission may require boats trawling for crabs to obtain a boat license which shall be good for one year. Only one boat license shall be required to be taken out on a boat in any one year regardless of whether the boat is used in trawling for crabs or shrimp or both.

1953 (48) 375.

§ 28-878. Size of mesh in net.

No trawling for crabs shall be done with a net having a bag with a mesh of less than five inches.

1953 (48) 375.

ARTICLE 9.*Shad and Sturgeon.***§ 28-881. Closed season on shad.**

This section applies to all methods of taking such fish, including fly rods, casting rods and sports tackle. Atty. Gen. Op., Apr. 7, 1954.

§ 28-886.1. Same; exception for Game Zone No. 7.

Notwithstanding the provisions of § 28-886, in Game Zone No. 7 a five and one-half inch mesh net may be used and it shall be lawful to set nets from Tuesday noon until Saturday noon during the open season.

1953 (48) 167.

§ 28-892. Records of persons trading in shad and sturgeon; reports.

All persons engaged in buying, shipping and selling shad or sturgeon shall keep books wherein shall be entered the date, kind and quantity of each sale, purchase or shipment, the name of each person from whom shad or sturgeon have been purchased and a copy of each bill of lading and shall make monthly reports to the Division of Commercial Fisheries not later than the fifth day of each month showing these details.

1942 Code § 3387; 1932 Code § 3387; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-893. Distribution of shad fry from Andrews shad hatchery.

The Commercial Fisheries Advisory Board is directed to ascertain the natural spawning ground along the Black River, Lynch's River, Great Pee Dee River, Little Pee River, Waccamaw River and Sampit River, the waters of which eventually flow into Winyah Bay, and to distribute the shad fry or fingerling from the Andrews shad hatchery, located on Black River, at the spawning grounds, as ascertained on said rivers, as far from the mouths of the respective streams as practical. The distribution shall be made upon the basis of the length and size of the respective streams.

1942 Code § 3421; 1937 (40) 347; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Commercial Fisheries Advisory Board for the former State Board of Fisheries.

ARTICLE 13.

*Licenses and Taxes.***§ 28-934. Licenses to take shellfish for market.**

Licenses to take shellfish for market shall be issued by the Division of Commercial Fisheries and supplied to the various county treasurers for sale and delivery to applicants who have been approved by the Division or the chief inspector and shall be as follows: on any boat of less than custom house tonnage propelled by standing sails and rigging, three dollars and on any boat registered or enrolled in the United States custom house, one and one half dollars on each gross ton.

1942 Code § 3375; 1932 Code § 3375; 1924 (33) 1016; 1939 (41) 324; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-935. License taxes on fishing appliances.

The following license tax is hereby levied annually upon the different fishing appliances, except sturgeon nets, used in the waters of this State:

- (1) Anchor gill nets, stake gill nets and drift gill nets, twenty-five cents for each one hundred yards or fraction thereof;
- (2) Trap nets, floating, one dollar and fifty cents each;
- (3) Submerged trap nets, three dollars each;
- (4) Crab pots, six dollars a hundred;
- (5) Shrimp trawl nets, five dollars each; and
- (6) For any apparatus used and not above enumerated, other than cast nets and hook and line, the license shall be the same as that provided for the apparatus or appliance which it most resembles.

1942 Code § 3379; 1932 Code § 3379; 1924 (33) 1016; 1947 (45) 576; 1949 (46) 609; 1954 (48) 1442.

Effect of amendment.—The amendment added item (4) above and changed numbering of former items (4) and (5) to (5) and (6), respectively.

The tax features of this section are reasonable, upon a proper classification and

upon proper subject matter. *Shipman v. DuPre*, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

License of a net may not be refused because of belief that it will be used illegally. *Atty. Gen. Op.*, Apr. 23, 1954.

§ 28-940. Fee for terrapin dealer's license.

The fee for such a license for dealers in terrapin shall be twenty-five dollars for one year for each separate place of business or locality in which a store, agency or pen may be located. No person shall deal in terrapin until duly licensed as such a dealer, nor shall any person buy and pen terrapin for the purpose of sale or shipment unless he be a dealer duly licensed by the Division of Commercial Fisheries.

1942 Code §§ 3394, 3395; 1932 Code §§ 3394, 3395; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-941. Procuring license to take, can, pack or ship shellfish.

Any person desiring to obtain a license for the taking, canning, packing or shipping of shellfish within this State for market shall take and subscribe to an oath according to the form provided by the Division of Commercial Fisheries, showing his name, age, color, citizenship, residence, place of business, kind of license applied for and waters in which he proposes to take shellfish. Upon such oath being approved in writing by endorsement thereon by the chairman of the Division, he may deliver it to any county treasurer to deliver to him a license accordingly.

1942 Code § 3378; 1932 Code § 3378; 1924 (33) 1016; 1936 (39) 1534; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-942. Procuring license to fish for market.

Each person desiring to fish for market shall, before engaging therein, file with the Division of Commercial Fisheries an application for a license, duly verified by oath, showing the number and kind of seines or other apparatus he proposes to use and his name, age, color, residence, and place of business and the waters wherein he proposes to fish. Upon the approval of the Division being endorsed thereon together with the amount of such license as may be required therefor he may, upon payment thereof to any county treasurer, receive the license. The amount of such license shall be a sum equal to the fee or tax prescribed for the different kinds and amounts of apparatus shown upon the application therefor, except when otherwise provided herein.

1942 Code § 3380; 1932 Code § 3380; 1924 (33) 1016; 1936 (39) 1533; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-943. Revocation of licenses.

The Division shall revoke any license issued under the provisions of §§ 28-941 or 28-942 when the party to whom such license is issued changes his place of business or handles his business from a place other than that set forth in his application and license without the written consent of the Director of the Division.

1942 Code § 3380; 1932 Code § 3380; 1924 (33) 1016; 1936 (39) 1533; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries and the Director of the Division for the former chief inspector.

§ 28-944. Shrimp boat licenses.

All owners of shrimp boats who are residents of this State shall, before operating a shrimp boat in the waters of this State obtain a license for such boat and pay therefor the sum of twenty dollars for each shrimp boat licensed. The license shall be in such form and obtained in such manner as the Board may direct.

All owners of shrimp boats who are nonresidents of this State shall, before operating a shrimp boat in the waters of this State, secure a license for each boat

as required of residents under the preceding paragraph, upon payment of the like sum of twenty dollars for each boat so licensed and shall, in addition, pay a fee of twenty-five dollars, together with five dollars for each member of the ship's crew who is a nonresident of this State.

At the time of securing such licenses for any such boat the owner thereof shall file with the Division of Commercial Fisheries a sworn statement giving the name and address of the master or captain of the boat. If such licensed shrimp trawler is found violating any fisheries law of this State it shall be presumed in all criminal and civil proceedings that the registered master or captain was in fact upon the boat and such presumption shall be prima facie evidence of the presence of the master or captain upon the boat and that he was operating it at the time of the violation charged.

In addition to punishment provided for in § 28-761, any boat trawling for shrimp in the waters of this State, without first being licensed, shall be confiscated, with its rigging and equipment, and shall be sold at public sale to the highest bidder for cash before the courthouse door of the county in which it was captured, after giving ten days' notice of such sale in a newspaper published in such county.

1942 Code § 3379; 1932 Code § 3379; 1924 (33) 1016; 1947 (45) 576; 1949 (46) 609; 1952 (47) 1691, 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

The tax features of this section are reasonable, upon a proper classification and upon proper subject matter. *Shipman v. Du Pre*, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

The provision that the licensee give a sworn statement showing the name and address of the master is a valid exercise of police power of the State. *Shipman v. De Pre*, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

The provisions relating to forfeitures do not violate due process, and are constitu-

tional. *Shipman v. Du Pre*, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

Since before the unlicensed boat or property can be sold there will have to be a conviction of the operator for operating without a license. This section provides for the confiscation "in addition to the punishment provided for in § 28-761." This meets the constitutional provisions of due process because it allows the parties charged a hearing and postpones a sale of the boat until determination of the criminal case against the operators, and conditions forfeiture upon a conviction of the criminal charge. *Shipman v. Du Pre*, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

§ 28-945. Nonresident shrimp boat licenses.

The Division of Commercial Fisheries shall not grant in any year more than one hundred nonresident licenses to operators of shrimp boats. In granting licenses to nonresident shrimp boats, the Division shall give preference to those nonresident boats that have been fishing in this State for the longest number of years. Applications for licenses by such boats, or the operators of such boats, shall be made on or before June 1st of the year for which such applications are made. If by June 1st of any year the Division has not granted one hundred licenses to the operators of nonresident shrimp boats which have previously operated in this State, the Division may then grant such licenses to any applicants thereafter until the number of one hundred licenses has been issued.

1947 (45) 576; 1948 (45) 2053; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-946. Nonresidents to pay State income taxes before being licensed.

The Division of Commercial Fisheries, before issuing any nonresident licenses, shall require proof that the owner of the nonresident boat has paid all income taxes due to the State for profits made from operations in the State during the preceding year.

1947 (45) 576; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-950. Revocation of shrimp boat licenses.

The Division of Commercial Fisheries shall immediately revoke for the period of time hereinafter stated, and have its designated inspector take up, any license issued to a resident or nonresident operator of a shrimp boat upon conviction of any violation of any of the fishing laws. Such revocation shall for a first offense be for ten days, for a second offense be for thirty days and for a third offense for one year.

1947 (45) 576; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-951. License for dealers in shrimp or prawn.

There shall be a license for buying or shipping shrimp or prawn, other than canned shrimp or prawn, in addition to the license for fishing for shrimp or prawn. The fee for such license shall be five dollars per annum. Persons granted such licenses must make monthly reports as the Division of Commercial Fisheries may require.

1942 Code § 3409; 1932 Code § 3409; 1925 (34) 225; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-952. Licenses for fishing for nonfood fish; fees.

Any person before fishing for or catching any nonfood fish shall procure from the Division of Commercial Fisheries a license authorizing such fishing and shall pay for such license the following tax: for each boat used in such fishing an amount equal to one dollar per net tonnage of such boat to be paid by each owner of such boat residing in this State, and a tax of two dollars per net tonnage of any boat owned and operated by nonresidents of this State. In addition an individual license tax of four dollars shall be paid by each nonresident fisherman engaged in fishing in the waters of this State. The net tonnage of any boat shall be determined by customhouse measurements.

1942 Code § 3413; 1932 Code § 3413; 1922 (32) 984; 1936 (39) 1498; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-953. Application for such license.

The captain or other officer of each boat before engaging in catching nonfood fish within any of the waters of this State shall make written application for a license to the treasurer of the county in which he intends to operate. The application shall be on a blank to be provided for by the Division of Commercial Fisheries and the treasurer of such county shall collect the tax herein provided for and make a full report to the Board.

1942 Code § 3413; 1932 Code § 3413; 1922 (32) 984; 1936 (39) 1498; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-954. Containers to have tax stamps affixed.

All containers used in shipping raw shucked oysters must have affixed to them in a manner to be prescribed by the Division of Commercial Fisheries cancelled tax stamps to the amount of five cents for each gallon of raw shucked oysters contained therein, under penalty of punishment as herein provided. But no stamp tax shall be required of local shuckers on raw shucked oysters sold to local consumers in less than gallon quantities.

1942 Code § 3369; 1932 Code § 3369; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Commercial Fisheries for the former State Board of Fisheries.

§ 28-957. Duties of county treasurer as to rentals, sale of tax stamps, etc.

The several county treasurers shall sell fisheries tax stamps and tags, receive and collect all licenses and rents for leased bottoms and report all such receipts, sales

and collections and also all defaults in the payment of rents of bottoms to the Division of Commercial Fisheries at the end of each month on forms furnished by the Division. For such services the county treasurer shall receive five per cent of the amount of such sales and collections. He shall deposit all such collections with the State Treasurer.

1942 Code § 3373; 1932 Code § 3373; 1924 (33) 1016; 1937 (40) 295; 1952 (47) 2890.

Effect of amendment.—The amendment Fisheries for the former State Board of substituted the Division of Commercial Fisheries.

§ 28-958. Withdrawal of tax stamps by inspector.

The county treasurer of each county having on hand tax stamps used in pursuance of this chapter shall allow any inspector of the Division of Commercial Fisheries to draw not exceeding fifty dollars in tax stamps, taking the receipt of the inspector therefor. The inspector so drawing such tax stamps shall account to the treasurer for the tax stamps so drawn and pay over to the treasurer the money for the stamps sold by him within thirty days from the time the tax stamps were drawn.

1942 Code § 3411; 1932 Code § 3411; 1925 (34) 225; 1929 (36) 213; 1952 (47) 2890.

Effect of amendment.—The amendment Fisheries for the former State Board of substituted the Division of Commercial Fisheries.

§ 28-960. Licensees to be furnished copies of regulations and fisheries law.

The Division of Commercial Fisheries upon issuing authority to secure any license under the provisions of this chapter shall furnish with such authority a copy of the printed rules and regulations of the Division and of the Coastal Fisheries Law.

1942 Code § 3384; 1932 Code § 3384; 1924 (33) 1016; 1952 (47) 2890.

Effect of amendment.—The amendment Fisheries for the former State Board of substituted the Division of Commercial Fisheries.

§ 28-961. Revenues to be deposited with State Treasurer; exception.

All revenues from taxes, licenses, fines and forfeitures, rentals or other sources derived from the fisheries or from the operation and enforcement of the Coastal Fisheries Law shall be deposited with the State Treasurer except that all fines and forfeitures for the violation of any of the Coastal Fisheries Law shall be paid to the treasurer of the county in which the violation occurs, if the case is brought by an officer of the State or county other than an inspector for the Division of Commercial Fisheries.

1942 Code § 3383; 1932 Code § 3383; 1924 (33) 1016; 1947 (45) 576; 1952 (47) 2890.

Effect of amendment.—The amendment Fisheries for the former State Board of substituted the Division of Commercial Fisheries.

ARTICLE 14.

Restricted Areas in Charleston County.

§ 28-972. Restricted areas designated by markers.

Day markers and buoys may be placed by or under the direction of the Division of Commercial Fisheries on the beaches and one mile off shore on the range of the respective lines herein designated which, when placed, shall control the range. But the absence of any such range markers or buoys shall not affect or impair the operation or enforcement of this article as the lines can be determined from U. S. Coast and Geodetic Survey Chart No. 1239, dated July 1930, and corrected to December 19 1935. The expense of erecting such range markers and buoys shall be defrayed by the Division.

1949 (46) 209; 1950 (46) 2380; 1952 (47) 2890.

Effect of amendment.—The amendment Fisheries for the former State Board of substituted the Division of Commercial Fisheries.

§ 28-976. Enforcement.

The Division of Commercial Fisheries shall enforce the provisions of this article. 1949 (46) 209; 1952 (47) 2890.

Effect of amendment.—The amendment Fisheries for the former State Board of substituted the Division of Commercial Fisheries.

ARTICLE 15.*Sanitation Regulations in Horry County.***§ 28-981. County health department to enforce article.**

In Horry County, the following regulations for commercial fisheries shall be of force and shall be enforced by the Horry County health department under the supervision of the State Board of Health.

1953 (48) 441.

§ 28-982. Article not applicable to private individuals.

This article shall not apply to private individuals or persons who catch fish for their own consumption.

1953 (48) 441.

§ 28-983. Building specifications for commercial fisheries.

All persons operating or maintaining facilities for the catching of salt water fish for commercial purposes shall, before operating or catching or selling any such fish, construct a building located entirely above the high water mark of the Atlantic Ocean, with a permanent cover and a concrete or wood floor, the sides of which shall be enclosed by screen wire or other material sufficient to prevent the entrance of flies, and sufficient doors of screen wire or other material shall be installed so that flies cannot enter the building. Such building shall be not less than 25 x 25 feet in size. There shall be provided in any such building adequate iced fish boxes or other refrigeration facilities approved by the State Board of Health to be used in the care of all fish stored in the building.

1953 (48) 441.

§ 28-984. Location of fishery must be approved; issuance of permit.

No fishery location shall be established or operated until the location has been approved by the inspector of the State Board of Health or the health officer and a permit issued by him. Such inspector or health officer shall not approve any location for a fishery which is so located that it may be detrimental to the health or safety of the public depending upon the prevailing conditions at such location.

1953 (48) 441.

§ 28-985. Seines to be within 600 feet of fish house.

No fishery operator shall place, or allow to be placed, his net or seine in the waters of the ocean at a distance greater than six hundred feet from the location of his fish house.

1953 (48) 441.

§ 28-986. Spoiled fish, refuse, scrap, etc.

No fish shall be sold or offered for sale for human consumption which are in anyway spoiled or unfit for human consumption. No refuse fish shall be left on the strand at any time. All scrap or other fish not fit for human consumption shall be immediately buried at some location above high water mark at a depth approved by the sanitation officer assigned to the area.

1953 (48) 441.

§ 28-987. Rules and regulations.

The executive committee of the State Board of Health may set up such rules and regulations as in its judgment may be necessary to carry out all of the terms, conditions and provisions of this article.

1953 (48) 441.

§ 28-988. Penalties.

Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or shall be imprisoned for a period of not less than ten days nor more than thirty days.

1953 (48) 441.

§ 28-989. Revocation of permit.

The permit issued by the inspector or health officer shall be revoked for a period of thirty days in case of a second violation of any of the provisions of this article and upon a third violation such permit may be permanently revoked at the discretion of the local health authorities.

1953 (48) 441.

CHAPTER 9.**SPECIAL PROVISIONS FOR CERTAIN COUNTIES OR AREAS.****Article 1.****Cherokee County.**

Sec.

28-1001. [Repealed.]

Article 2.**Catawba-Wateree Fish and Game Commission.**

28-1013. Powers and duties.

28-1014. [Repealed.]

28-1015. Fishing regulations for area.

28-1016. [Repealed.]

Article 3.**Lanier Lake.**

28-1031. Agreement respecting Lanier Lake.

Article 5.**Horry County Fish and Game Commission.**

28-1065. [Repealed.]

28-1068. Fish and game seasons.

Article 6.**Colleton County Game and Fish Commission.**

28-1086. [Repealed.]

28-1088. Other duties of Commission.

Article 7.**Duties of Lee County Legislative Delegation.**

28-1101. [Repealed.]

28-1103. [Repealed.]

28-1104. Cooperation with Division of Game.

Article 8.**Marion County Fish and Game Commission.**

28-1124. General powers and duties.

28-1126. [Repealed.]

Article 10.**Pickens County Fish and Game Commission.**

28-1155. [Repealed.]

28-1157. Cooperation with Division of Game.

28-1158. Report on game wardens.

Article 11.**Spartanburg County Game and Fish Commission.**

Sec.

28-1165 to 28-1169. [Repealed.]

28-1169.2. Cooperation with the Division of Game.

28-1169.3. [Repealed.]

28-1169.4. Report on game wardens and technicians.

Article 12.**Williamsburg County Fish and Game Commission**

28-1175. Cooperation with Division of Game.

28-1177, 28-1178. [Repealed.]

28-1180. [Repealed.]

Article 14.**Catawba Lake Fishing Area.**

28-1202, 28-1203. [Repealed.]

Article 14.1.**Portions of Catawba River.**

28-1207. Fishing from boats, etc., in certain areas prohibited.

Article 15.**Lake Marion, Lake Moultrie, etc.**

28-1211. Resident permits.

28-1212. Nonresident permits; good in private ponds in Clarendon County.

28-1213. [Repealed.]

Article 16.**Fishing in Certain Lakes in Game Zones Nos. 2 and 3.**

28-1221. Permits for resident to fish.

28-1224. Sale of permits; use of receipts.

Article 17.**Fishing in Certain Lakes in Game Zone No. 2.**

28-1231. Resident permits.

28-1233. Sale of permits; expenditure of receipts.

Article 18.**Fishing in and Hunting on Portions of Savannah River, Clark's Hill Reservoir and Steven's Creek Reservoir, Game Zone No. 2.**

28-1250. Resident permits.

Sec.	Sec.
28-1250.1. Nonresident fishing licenses.	28-1250.5. Amendments to such regulations; additional regulations.
28-1250.2. When Georgia residents may fish in Clark's Hill Reservoir.	28-1250.6. Further or altered regulations.
28-1250.3. Persons not required to have permits.	28-1250.7. Use of receipts.
28-1250.4. Regulations for fishing in such waters.	28-1250.8. Penalties.
	28-1251 to 28-1258. [Repealed.]

ARTICLE 1.

*Cherokee County.***§ 28-1001. Expenditure of game funds.**

Repealed by A. & J. R. 1952 (47) 2179.

Cross reference.—See now § 28-12.1.

ARTICLE 2.

*Catawba-Watercree Fish and Game Commission.***§ 28-1013. Powers and duties.**

The commission shall cooperate with the Department in the enforcement of all fishing laws and regulations within said counties and shall work under the direction of the Department in the enforcement of all rules and regulations herein provided.

1949 (46) 335; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Department for the former Chief Game Warden and eliminated a sentence giving the Commission control of fishing in waters of the Catawba and Watercree rivers in cooperation with the former State Game Department.

§ 28-1014. Employment of wardens, etc.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-1015. Fishing regulations for area.

The following rules and regulations shall be enforced by the commission under the direction of and in cooperation with the Division of Game:

(1) A license fee of one dollar and ten cents per year shall be paid by any person fishing within the aforesaid waters, one dollar of which shall go to the commission and ten cents to the person selling the license; but persons fifteen years of age or under or sixty-five years of age or over shall be exempt from paying any such license fee;

(2) The size limit shall be bass ten inches, other game fish except bream six inches and bream five inches;

(3) Residents of the State must have resident anglers' licenses also, if fishing with artificial bait or manufactured tackle; all nonresidents must have nonresident licenses regardless of the manner of fishing;

(4) Traps, wire baskets, seines and nets are prohibited; split baskets and trotlines may be used for catching non-game fish if a metal non-game permit tag for each such basket or trotline has been procured from a game warden;

(5) Each person is allowed only five fishing canes at any time; and

(6) All other State game and fish laws shall also be applicable in the area. The metal non-game permit tag referred to in item (4) of this section may be obtained from a game warden upon the payment, annually, of the sum of twenty-five cents for each split basket or trotline used. Such tag shall be attached to the split basket or trotline for which it is issued.

1949 (46) 335; 1950 (46) 2208; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Game for the former Chief Game Warden and eliminated a provision for a daily bag limit. For such daily bag limit, see now § 28-589.1.

§ 28-1016. Receipts from licenses and fines.

Repealed by A. & J. R. 1952 (47) 2179.

ARTICLE 3.

*Lanier Lake.***§ 28-1031. Agreement respecting Lanier Lake.**

The South Carolina Wildlife Resources Department may enter into an agreement with the owners of Lake Lanier, located in *Greenville* County, whereby the Department may take over the management of said lake and lake property for fisheries and hunting purposes and shall take the necessary steps toward restocking the same with fish, designating open and closed seasons for fishing and hunting thereon, making rules and regulations by which permits may be issued to persons for fishing and hunting thereon and in all other ways exercising complete control of the waters of said lake in such a manner that will most successfully restock, propagate and protect the fish and game in the lake for the benefit of the public in general.

1942 (42) 1574; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the South Carolina Wildlife Resources Department for the former Fish and Game Department of the State.

ARTICLE 5.

*Horry County Fish and Game Commission.***§ 28-1065. Duties and powers; game wardens.**

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-1068. Fish and game seasons.

The commission shall cooperate with the Division of Game in supervision over the opening and closing of all fish and game seasons in *Horry* County, regulations in connection therewith and control thereof, insofar as is consistent with the statutory laws of the State.

1946 (44) 1353; 1952 (47) 2890.

Effect of amendment.—The amendment substituted the Division of Game for the former Chief Game Warden.

ARTICLE 6.

*Colleton County Game and Fish Commission.***§ 28-1086. Recommendations as to appointment of game wardens and salaries.**

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-1088. Other duties of commission.

The commission shall also submit recommendations from time to time to the county legislative delegation concerning the opening and closing of the season for taking game and fish, shall cooperate with the game wardens in the enforcement of the law and shall conduct such educational programs in fish and game conservation as it may determine to be proper.

1950 (46) 2284; 1952 (47) 2890.

Effect of amendment.—The amendment eliminated a provision permitting the commission to recommend the discharge of a game warden and the filling of the vacancy thus created.

ARTICLE 7.

*Duties of Lee County Legislative Delegation.***§ 28-1101. General duties.**

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-1103. Appointment of game wardens.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-1104. Cooperation with Division of Game.

The county legislative delegation shall cooperate with the Division of Game and shall report semiannually to the Director of the Division the actions of all game wardens in *Lee County*.

1949 (46) 408; 1951 (47) 389; 1952 (47) 2890.

Effect of amendment.—The amendment gation to recommend the suspension or eliminated a provision permitting the dele- discharge of a game warden.

ARTICLE 8.

*Marion County Fish and Game Commission.***§ 28-1124. General powers and duties.**

The commission shall cooperate with the Division of Game in supervision over the opening and closing of all fish and game seasons in *Marion County* and regulations in connection therewith and control thereof, insofar as is consistent with the statutory laws of the State.

1949 (46) 229; 1952 (47) 2890.

Effect of amendment.—The amendment game in the county and changed the reference to "Division of Game" from the former "Chief Game Warden."

§ 28-1126. Nomination of game wardens.

Repealed by A. & J. R. 1952 (47) 2890.

ARTICLE 10.

*Pickens County Fish and Game Commission.***§ 28-1155. Authority; nomination of game wardens.**

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-1157. Cooperation with Division of Game.

The commission shall cooperate with the Division of Game in supervision, regulation and control, insofar as is consistent with the statutory laws of the State, of the opening and closing of all fish and game seasons in the county.

1950 (46) 2035; 1952 (47) 2890.

Effect of amendment.—The reference to the Division of Game was formerly to the Chief Game Warden.

§ 28-1158. Report on game wardens.

The commission shall report to the Department the actions of any game warden in the county and recommend suspension or discharge of any warden.

1950 (46) 2035; 1952 (47) 2890.

Effect of amendment.—The amendment eliminated a sentence providing for filling vacancies.

ARTICLE 11.

*Spartanburg County Game and Fish Commission.***§§ 28-1165 to 28-1169. General supervision by commission; game wardens and technicians.**

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-1169.2. Cooperation with the Division of Game.

The commission shall cooperate with the Division of Game in supervising, regulating and controlling fishing and hunting and the closing of fish and game seasons in the county, insofar as is consistent with the laws of this State.

1951 (47) 425; 1952 (47) 2890.

Effect of amendment.—The commission the Chief Game Warden instead of the was formerly enjoined to cooperate with Division of Game.

§ 28-1169.3. Chief Game Warden to report monthly on finances.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-1169.4. Report on game wardens and technicians.

The Commission shall report to the Department the actions of all game wardens and technicians in the county and recommend the suspension or discharge of any warden or technician.

1951 (47) 425; 1952 (47) 2890.

Effect of amendment.—The amendment eliminated provisions authorizing the Commission to fill vacancies and providing for the approval of the legislative delegation

on recommendations for suspension or discharge. It also substituted the Department for the former Chief Game Warden.

ARTICLE 12.

*Williamsburg County Fish and Game Commission.***§ 28-1175. Cooperation with Division of Game.**

The commission shall cooperate with the Division of Game in supervising, regulating and controlling fishing and hunting and the closing of fish and game seasons in the county insofar as is consistent with the laws of the State.

1947 (45) 283; 1952 (47) 2890.

Effect of amendment.—Formerly the commission was given general supervision over fish and game in the county and the

reference to the Division of Game was to the Chief Game Warden.

§§ 28-1177, 28-1178. Finances and nomination of game wardens.

Repealed by A. & J. R. 1952 (47) 2890.

§ 28-1180. Removal of wardens.

Repealed by A. & J. R. 1952 (47) 2890.

ARTICLE 14.

*Catawba Lake Fishing Area.***§§ 28-1202, 28-1203. Wardens.**

Repealed by A. & J. R. 1952 (47) 2890.

ARTICLE 14.1.

*Portions of Catawba River.***§ 28-1207. Fishing from boats, etc., in certain areas prohibited.**

It shall be unlawful for any person to fish from a raft, boat or any other floating device in the following described areas on the Catawba River in York County:

(1) An area lying downstream from the Catawba dam and power house of the Duke Power Company in York County, said area extending for a distance of approximately three hundred and seventy-five feet downstream from the south or downstream wall of the power house and extending from the east bank of the river to the southwestern corner of the dam; and

(2) An area on the upstream side of the power house extending for a distance of approximately one hundred feet from the northern or upstream wall of the power house and extending from the eastern bank of the pond to the western wall of the power house.

This section shall not be construed to prevent fishing from any point on the rock pile situate below the India Hook Dam or on the banks adjacent to the areas above described. The term "*banks adjacent to the areas above described*" shall not include any part or extension of the dam.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars nor more than

fifty dollars or imprisoned for not more than thirty days, in the discretion of the trial court.

1952 (47) 2889.

ARTICLE 15.

Lake Marion, Lake Moultrie, etc.

§ 28-1211. Resident permits.

All residents of the State, before fishing in the waters of Lake Marion, Lake Moultrie, the Diversion Canal connecting these lakes and the Tail Canal, shall purchase fishing permits from the Director of the Division of Game at a cost of one dollar and ten cents, good for the calendar year.

1951 (47) 258; 1952 (47) 2890.

Effect of amendment.—The permits were formerly issued by the State Game and Fish Commission.

§ 28-1212. Nonresident permits; good in private ponds in Clarendon County.

The holder of such a temporary license may also fish in any private pond in Clarendon County during the time authorized above if the holder has the pond owner's permission.

1953 (48) 217.

Effect of amendment.—The amendment affected by the amendment and is therefore not set forth above. The remainder of the section was otherwise un-

§ 28-1213. Use of permit receipts.

Repealed by A. & J. R. 1952 (47) 2179.

ARTICLE 16.

Fishing in Certain Lakes in Game Zones Nos. 2 and 3.

§ 28-1221. Permits for resident to fish.

In addition to all other licenses or fees required by law to be paid, all residents of the State, before fishing in the waters of any artificial lake with an area in excess of forty-nine thousand acres and a shore line in excess of five hundred miles in Game Zones Nos. 2 and 3, shall purchase fishing permits from the Director of the Division of Game at a cost of one dollar and ten cents. Such permit shall be good for the calendar year in which it is purchased.

1951 (47) 271; 1952 (47) 2890.

Effect of amendment.—Formerly the permit was secured from the State Game and Fish Department.

§ 28-1224. Sale of permits; use of receipts.

The Director of the Division of Game shall procure and distribute for sale the permits required by §§ 28-1221 and 28-1222 and each person selling either the resident or nonresident permits shall retain ten cents from the sale for handling and selling them and transfer the remainder to the Director. The Director shall expend this fund only upon the recommendation of three fourths of the total membership of the combined legislative delegations from the counties of Lexington, Newberry, Richland and Saluda and the fund shall be used solely and exclusively for fish and game protection in any artificial lake with an area in excess of forty-nine thousand acres and a shore line in excess of five hundred miles in Game Zones Nos. 2 and 3.

1951 (47) 271; 1952 (47) 2890.

Effect of amendment.—Formerly the functions of the Director were exercised by the Chief Game Warden.

ARTICLE 17.

*Fishing in Certain Lakes in Game Zone No. 2.***§ 28-1231. Resident permits.**

All residents of the State, before fishing in the waters of any artificial lake with an area of ten thousand acres or more in Game Zone No. 2, excepting Clark's Hill and that portion of Lake Murray which lies in Game Zone No. 2, or any other lake or reservoir built, owned or supervised totally or partially by the Federal Government, shall purchase fishing permits from the Director of the Division of Game at a cost of one dollar and ten cents the permit being good for the calendar year. The provisions of this section shall not apply to any person fourteen years of age or younger, to any person over sixty-five years of age or to organized and supervised orphan groups.

1951 (47) 438; 1952 (47) 2890.

Effect of amendment.—Formerly the upon the State Game and Fish Commission functions of the Director were devolved sion.

§ 28-1233. Sale of permits; expenditure of receipts.

The Director of the Division of Game shall procure and distribute for sale the permits required by §§ 28-1231 and 28-1232 and each person selling either the resident or nonresident permits shall retain ten cents from the sale for handling and selling them and transfer the balance to the Director. The Director shall expend this fund only upon the recommendation of a majority of the house members from *Greenwood*, *Laurens* and *Newberry* Counties and a majority of the Senators from these three counties and solely for game and fish protection and propagation in Lake Greenwood.

1951 (47) 438; 1952 (47) 2890.

Effect of amendment.—Formerly the upon the State Game and Fish Commission functions of the Director were devolved sion.

ARTICLE 18.

*Fishing in and Hunting on Portions of Savannah River, Clark's Hill Reservoir and Steven's Creek Reservoir, Game Zone No. 2.***§ 28-1250. Resident permits.**

All residents of this State fishing in or hunting on the waters of the Savannah River between the Steven's Creek Dam and the highway bridge between Calhoun Falls, South Carolina, and Elberton, Georgia, including the waters impounded by the Steven's Creek Dam and the Clark's Hill Dam, all in Game Zone No. 2, shall purchase and have in possession while fishing or hunting permits which shall be issued by the Division of Game in the same manner as hunting and fishing licenses and permits issued by it and subject to the same laws as to the handling thereof. The charge for such permits shall be one dollar and ten cents, and the permit shall be good for the fiscal year in which issued. This permit shall be in addition to the regular angler's license required of those fishing with the artificial tackle and equipment designated in the laws relating to such anglers' licenses, and also in addition to the regular license required for hunting.

1954 (48) 1560.

Cross reference.—See § 28-886 size of net use in Savannah River catch shad.

§ 28-1250.1. Nonresident fishing licenses.

Before fishing in any of the waters specified in § 28-1250, any nonresident, except a resident of Georgia licensed as required by §§ 28-1250.2 and 28-1250.6 in accord with a reciprocal agreement, shall obtain and have in possession either a temporary or annual nonresident fishing license, which the Division of Game shall issue to applicants. The temporary nonresident license shall authorize the holder thereof to exercise only the privilege of fishing in the waters of the area for a period of three

consecutive days, to be specified on the license, and shall be issued to the applicant upon the payment of three dollars and ten cents therefor. The annual nonresident fishing license shall be issued to the applicant according to the provisions of § 28-552.2. There shall be no other licenses or permits required for fishing by the holders of either the temporary or annual nonresident licenses mentioned above. The manner of issuance and handling of these nonresident licenses shall be the same as provided for the issuance of the other licenses and permits issued by the Director of the Division of Game and subject to the same laws forbidding postdating and other provisions governing the issuance and handling of the same.

1954 (48) 1560.

§ 28-1250.2. When Georgia residents may fish in Clark's Hill Reservoir.

Notwithstanding any of the foregoing, the Director of the Division of Game may negotiate a reciprocal agreement with the authorities of the State of Georgia whereby any resident of Georgia properly licensed by that State may fish anywhere in the Clark's Hill Reservoir, but not in Steven's Creek backwater, with no other license being required, if any resident of South Carolina, properly licensed by South Carolina, shall be permitted the same privilege of fishing anywhere in the Clark's Hill Reservoir, with no other license being required.

1954 (48) 1560.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Wildlife Resources Commission, State, in Volume 7.

§ 28-1250.3. Persons not required to have permits.

The provisions of § 28-1250 shall not apply to any person twelve years of age or younger, to any resident person sixty-five years of age or over or to any resident organized or supervised orphan groups.

1954 (48) 1560.

§ 28-1250.4. Regulations for fishing in such waters.

The regulations for fishing in the waters specified in § 28-1250 shall be as follows, unless changed as provided for in § 28-1250.6:

(1) Daily bag limit: eight bass, twenty other game fish; and no person shall have in possession more than this number of fish while on the waters or the lands immediately adjacent thereto.

(2) Traps, seines and nets prohibited. Baskets designed to catch non-game fish may be used for catching non-game fish. The Director of the Division of Game shall specify the design and type basket that may be used. Trot lines may also be used for catching non-game fish and shall not be baited with minnows, insects, worms, any type live bait or other bait designed to catch game fish. No trot line may have more than one hundred hooks. Before either trot line or basket is used in these waters a non-game fish tag must be secured from the game warden or agent of the Division of Game at a cost of one dollar for each basket or trot line. The person or his agent designated in writing securing a tag or tags must fish his or her own basket or trot line. These tags must be securely attached to baskets or trot lines while they are in use. Each such non-game tag shall be good for only the fiscal year in which issued. The Director may regulate the number of tags to be issued to any person.

(3) It is unlawful for any person to have in his possession game fish or fishing tackle of a design to catch game fish while fishing baskets or trot lines as provided for in item (2) of this section.

(4) Licensees holding all required fishing licenses and permits may use minnow seines to catch minnows only from daylight until nine o'clock P. M. No seine over thirty feet long may be used.

(5) Use of high powered lights or flashlights of over five cells are hereby prohibited while fishing. No person shall have any rifle in his possession in any boat. Nor shall any person fire a rifle within one hundred yards from the shore line of such waters.

(6) All other State game and fish laws not inconsistent herewith are hereby declared to be applicable to the above waters and lands adjacent.

(7) Any device being used in the violation of this article confiscated and delivered to the Division of Game in Columbia.

1954 (48) 1560.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Wildlife Resources Commission, State, in Volume 7.

§ 28-1250.5. Amendments to such regulations; additional regulations.

The Director of Game with the approval of a majority of the legislative delegations of the counties adjacent to the waters referred to in § 28-1250 may amend regulations in § 28-1250.4 or make new ones as same become desirable.

1954 (48) 1560.

§ 28-1250.6. Further or altered regulations.

The Director of the Division of Game shall also negotiate for and enter into a reciprocal agreement with the authorized officials of the State of Georgia, adopting rules and regulations for the preservation and propagation of fish and game within the area, the recognition of the licenses and permits of one State by the other and the enforcement of the laws of the two States over the area involved. If necessary to reach such an agreement, or it is deemed advisable for the better protection and management of the game and fish of this area, the Director may increase the bag limit prescribed by item (1) of § 28-1250.3 to not more than twelve bass and thirty other game fish in possession at one time, and may make and agree to other reasonable rules and regulations with the Georgia authorities, not inconsistent with the laws of this State, and may change or alter them from time to time. Any rules and regulations so adopted by the authorized officials of the two States, on the above subjects and not inconsistent with the laws of this State, shall have the force and effect of law, after being published in newspapers circulating in the area at least once a week for three weeks, and after copies thereof have been filed with the Secretary of State, as provided by law. Any reciprocal agreement so entered into shall contain a provision that either party thereto may cancel it upon ninety days' written notice to the other party.

1954 (48) 1560.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Wildlife Resources Commission, State, in Volume 7.

§ 28-1250.7. Use of receipts.

All funds collected by the director and division of game from the sale of the permits and licenses required herein shall be placed to the credit of the Game Protection Fund of the State Treasury to be disbursed by the South Carolina Wildlife Resources Commission solely for game and fish protection and propagation in the above described waters and adjacent areas.

1954 (48) 1560.

§ 28-1250.8. Penalties.

Any person violating any of the provisions of this article or any of the rules or regulations adopted and promulgated under the authority thereof shall be guilty of a misdemeanor and shall upon conviction thereof be subject to fine of not less than ten nor more than one hundred dollars or imprisonment for not more than thirty days.

1954 (48) 1560.

§§ 28-1251 to 28-1258. Resident permits; penalties.

Repealed by A. & J. R. 1954 (48) 1560.

Cross reference.—See now §§ 28-1250 to 28-1250.8.

The license provided for in paragraph (2) of § 28-1255 (now repealed; see now § 28-1250.4) is on the basket and not on the fisherman, and there was no violation by

appellants in fishing with baskets to each of which non-game fish tag was attached, even though tags had been procured by their employer who owned the baskets and not by themselves. *State v. Vaughn et al.*, 225 S. C. 149, 81 S. E. (2d) 62 (1954).

Title 29.
Forestry.

- Chap. 1. General Provisions, § 29-2.
2.1. Southeastern Interstate Forest Fire Protection Compact, §§ 29-71 to 29-71.6.
3. Local Provisions; Fire Protection, §§ 29-105.50 to 29-151.

CHAPTER 1.
GENERAL PROVISIONS.

Sec.
29-2. Terms of office of members.

§ 29-2. Terms of office of members.
The terms of office of the present members of the Commission are hereby extended from the thirtieth day of May to the thirtieth day of June of the year in which their present terms expire. The successor to the member whose term expired on the thirtieth day of June 1953 was appointed for a term of five years from that date and the successors to the members whose terms expire on June 30 1954, 1955 and 1956, respectively, shall be appointed for a period of six years and thereafter all appointive members shall be appointed for a term of six years. The president of The Clemson Agricultural College of South Carolina shall continue a member of the Commission as long as he retains his office as president of the college.
1942 Code § 3278; 1932 Code § 3278; 1927 (35) 367; 1953 (48) 147.
Effect of amendment.—The amendment six years and made them terminate on extended the terms of office from four to June 30th instead of May 30th.

CHAPTER 2.1.
SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT.

- | | |
|--|--|
| Sec. | Sec. |
| 29-71. Governor may execute compact; legislative approval. | 29-71.4. Advisory committee of the Southeastern Interstate Forest Fire Protection Compact. |
| 29-71.1. Terms of compact. | 29-71.5. Authority of State Forester and Committee; State employees cooperate. |
| 29-71.2. Effective date; exchange of documents. | 29-71.6. Authority of Commission of Forestry cumulative. |
| 29-71.3. Compact administrator. | |

§ 29-71. Governor may execute compact; legislative approval.
The Governor on behalf of this State may execute a compact, in substantially the form set out in § 29-71.1 with any one or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, Virginia and West Virginia. The Legislature hereby signifies in advance its approval and ratification of such a compact.
1954 (48) 1774.

§ 29-71.1. Terms of compact.
ARTICLE I.

The purpose of this compact is to promote effective prevention and control of forest fires in the southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

ARTICLE II.

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, which are contiguous have ratified it and Congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact, subject to approval by the Legislature of each of the member states.

ARTICLE III.

In each state, the State Forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of Legislators, Forestry Commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the Senate and one member of the House of Representatives who shall be designated by that state's Commission on Interstate Cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the Governor of each member state shall appoint two representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

ARTICLE IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

ARTICLE V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance, or use of any equipment or supplies in connection therewith: *Provided*, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request: *Provided*, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this compact the term *employee* shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

ARTICLE VI.

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member state.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between any Federal agency and a member state or states.

ARTICLE VII.

The compact administrators may request the United States Forest Service to act as a research and coordinating agency of the Southeastern Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any Federal agency engaged in forest fire prevention and control may attend meetings of the Compact Administrators.

ARTICLE VIII.

The provisions of Articles IV and V of this compact which relate to mutual aid in combatting, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region: *Provided*, that the Legislature of each state shall have given its assent to such mutual aid provisions of this compact.

ARTICLE IX.

This compact shall continue in force and remain binding on each state ratifying it until the Legislature or the Governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the Chief Executive of the state desiring to withdraw to the Chief Executives of all states then parties to the compact.

1954 (48) 1774.

§ 29-71.2. Effective date; exchange of documents.

When the Governor shall have executed such compact on behalf of this State and shall have caused a verified copy thereof to be filed with the Secretary of State, and when such compact shall have been ratified by one or more of the states named in § 29-71, then it shall become operative and effective as between this State and such other state or states. The Governor shall take such action as may be necessary to complete the exchange of official documents between this State and any other state ratifying such compact.

1954 (48) 1774.

§ 29-71.3. Compact Administrator.

In pursuance of *Article III* of the compact as set out in § 29-71.1, the State Forester shall act as compact administrator for this State of the Southeastern Interstate Forest Fire Protection Compact during his term of office as State Forester. His successor as compact administrator shall be his successor as State Forester. The State Forester as compact administrator may delegate from time to time to any deputy or other subordinate in his department or office the power to be present and participate, including voting as his representative or substitute, at any meeting, hearing or other proceeding of the compact administrators.

1954 (48) 1774.

§ 29-71.4. Advisory Committee of the Southeastern Interstate Forest Fire Protection Compact.

There shall be four members of the Southeastern Interstate Forest Fire Protection Compact Advisory Committee from this State. Two of the members from this State shall be members of the General Assembly of South Carolina, one from the Senate and one from the House of Representatives, designated by the South Carolina Commission on Interstate Cooperation, and the terms of any such members shall terminate at the time they cease to hold legislative office. Their successors as members shall be named in like manner. The Governor shall appoint the other two members, one of whom shall be associated with forestry or forest products industries. The terms of such members shall be three years and they shall hold office until their respective successors shall be appointed and qualified. The terms of each of the initial four memberships of the Committee, whether appointed at said time or not, shall begin upon the date upon which the compact shall become effective in accordance with Article II thereof. Vacancies occurring in the office of such members from any reason or cause shall be filled by appointment by the Governor for the unexpired term. The State Forester as compact administrator shall be an ex officio member of the Committee and chairman ex officio of the South Carolina members of the Committee. The State Forester as compact administrator may delegate from time to time to any deputy or other subordinate in his department or office the power to be present and participate, including voting as his representative or substitute, at any meeting, hearing or other proceeding of the Committee. Any member of the Committee may be removed from office by the Governor upon charges after a hearing.

1954 (48) 1774.

Membership on the Advisory Committee and a county forestry board does not violate constitutional prohibition against holding two offices at same time, but membership on the Advisory Committee, on

Hospital Board and on county forestry board would do so, as would a county commissioner who is also a member of the Advisory Committee and a county forestry board. Atty. Gen. Op., Sept. 17, 1954.

§ 29-71.5. Authority of State Forester and Committee; State employees cooperate.

There is hereby granted to the State Forester, as compact administrator and chairman ex officio of the South Carolina members of the Committee, and to the members from this State of the Committee all the powers provided for in the compact and also all the powers necessary or incidental to the carrying out of the compact in every particular. All State officers shall do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of the compact in every particular. It is hereby declared to be the policy of this State to perform and carry out the compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of the State government or administration of this State shall at convenient times and upon request of said compact administrator, or of the Committee, furnish information and data relating to the purposes of the compact possessed by them or any of them to said compact administrator or the Committee. They may further aid said compact administrator or the committee by loan of personnel, equipment or other means in carrying out the purposes of the compact.

1954 (48) 1774.

§ 29-71.6. Authority of Commission of Forestry cumulative.

Any powers herein granted to the State Commission of Forestry shall be regarded as in aid of and supplemental to, and in no case a limitation upon, any of the powers vested in said commission by other laws of the State, the laws of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, Virginia, and West Virginia, the Congress of the United States or the terms of such compact.

1954 (48) 1774.

CHAPTER 3.

LOCAL PROVISIONS; FIRE PROTECTION

Sec.
29-105.50. Starting of fires in woodlands, grassland, etc. between October 15 and May 15 in Colleton County regulated.

Sec.
29-151. Board of Rural Fire Control in York County.

§ 29-105.50. Starting of fires in woodlands, grassland, etc. between October 15 and May 15 in Colleton County regulated.

Provisions of A. & J. R. 1954 (48) 1787 make up this section.

§ 29-151. Board of Rural Fire Control in York County.

Provisions of A. & J. R. 1954 (48) 1544 make up this section.

Title 30.**General Assembly.**

- Chap. 1. General Provisions, §§ 30-1, 30-1.1.
 3. Legislative Council, §§ 30-101 to 30-108.
 4. Lobbyists and Lobbying, § 30-151.

CHAPTER 1.**GENERAL PROVISIONS.**

Sec.

30-1. [Repealed.]

Sec.

30-1.1. Apportionment of members of House of Representatives.

§ 30-1. Apportionment of members of House of Representatives.

Repealed by A. & J. R. 1952 (47) 1998.

§ 30-1.1. Apportionment of members of House of Representatives.

Until the next apportionment, the representatives of the several counties in the House of Representatives shall be as follows: *Abbeville*, one; *Aiken*, three; *Allendale*, one; *Anderson*, five; *Bamberg*, one; *Barnwell*, one; *Beaufort*, two; *Berkeley*, two; *Calhoun*, one; *Charleston*, ten; *Cherokee*, two; *Chester*, two; *Chesterfield*, two; *Clarendon*, two; *Colleton*, two; *Darlington*, three; *Dillon*, two; *Dorchester*, one; *Edgefield*, one; *Fairfield*, one; *Florence*, five; *Georgetown*, two; *Greenville*, ten; *Greenwood*, two; *Hampton*, one; *Horry*, three; *Jasper*, one; *Kershaw*, two; *Lancaster*, two; *Laurens*, three; *Lee*, one; *Lexington*, three; *McCormick*, one; *Marion*, two; *Marlboro*, two; *Newberry*, two; *Oconee*, two; *Orangeburg*, four; *Pickens*, two; *Richland*, eight; *Saluda*, one; *Spartanburg*, nine; *Sumter*, three; *Union*, two; *Williamsburg*, two; and *York*, four.

1952 (47) 1998.

CHAPTER 3.**LEGISLATIVE COUNCIL.**

Sec.

30-101. Creation and composition.

Sec.

30-107 and 30-108. [Repealed.]

§ 30-101. Creation and composition.

There is hereby created a Legislative Council of the General Assembly of South Carolina, the membership of which shall be composed of the President of the Senate, the Speaker of the House of Representatives, the Secretary of State, the Chairman of the Judiciary Committee of the Senate and the Chairman of the Judiciary Committee of the House of Representatives.

1949 (46) 555; 1954 (48) 1761.

Effect of amendment.—The amendment of House Judiciary Committee to Legislative Council and eliminated Code Commission as a member.

§§ 30-107 and 30-108. Director; additional employees.

Repealed by A. & J. R. 1954 (48) 1761.

Cross reference.—See now §§ 1-301 and 1-305.

CHAPTER 4.**LOBBYISTS AND LOBBYING.**

Sec.

30-151. Registration.

§ 30-151. Registration.

Every person who employs any person to act as counsel or agent to promote or oppose in any manner the passage by the General Assembly of any legislation affecting the pecuniary interest of any person as distinct from those of the whole

people of the State or to act in any manner as legislative counsel or agent in connection with any such legislation shall, within one week after the date of such employment, cause the name of the person so employed to be entered upon a legislative docket as hereinafter provided. The person so employed shall also enter or cause to be entered his name upon such docket. Upon the termination of such employment such fact may be entered opposite the name of any person so employed either by the employer or employee. Before any such employee or agent shall be permitted to appear in the interest of or present the cause of his employer before any committee of the General Assembly, he shall announce or cause to have announced his name as well as the name of his employer or principal and the fact of his registration as required by § 30-152.

1942 Code § 2070-1; 1935 (39) 3; 1953 (48) 361.

Effect of amendment.—The last sentence is new.

Title 31.

Guardian and Ward.

- Chap. 1. General Provisions, §§ 31-1 to 31-17.
 3. Public Guardians, §§ 31-101 to 31-108.
 4. Uniform Veterans' Guardianship Act, §§ 31-220 to 31-226.

CHAPTER 1.

GENERAL PROVISIONS.

- | | |
|--|---------------------|
| Sec. | Sec. |
| 31-1. Jurisdiction of probate judge. | 31-17. Commissions. |
| 31-8. Citation of guardian removed from State. | |

§ 31-1. Jurisdiction of probate judge.

The judge of probate shall have jurisdiction in relation to the appointment and removal of guardians of minors and persons who are mentally incompetent and in relation to the duties imposed by law on such guardians and the management and disposition of the estates of their wards.

1942 Code § 209; 1932 Code § 209; Civ. P. '22 § 167; Civ. P. '12 § 43; Civ. P. '02 § 38; 1870 (14) § 39; 1952 (47) 2042. Const. Art. 5, § 19.

Effect of amendment.—Formerly instead of referring to "persons who are mentally incompetent" the section referred to "in- sane and idiotic persons and person non compos mentis."

§ 31-8. Citation of guardian removed from State.

In case of change of domicile by any guardian of a minor or committee of a mentally incompetent person to a place beyond the limits of this State and absence therefrom for ten consecutive months, if such change or absence is made to appear to the satisfaction of the judge of probate of the county wherein the appointment was made, such judge of probate shall cite the guardian or committee to account in person before him on a day named in the citation, which shall not be less than sixty days from the date thereof. Such citation shall be served upon the absent guardian or committee by publication forthwith, once a week for four weeks, in the newspaper in which the judge of probate publishes his official advertisements and a copy shall be mailed to the absent guardian or committee at his place of residence, if it is known or can with reasonable diligence be ascertained.

1942 Code § 8617; 1932 Code § 8617; Civ. '22 § 5548; Civ. C. '12 § 3768; Civ. C. '02 § 2675; G. S. 644; R. S. 2174; 1878 (16) 700; 1952 (47) 2042.

Effect of amendment.—The amendment substituted competent person" for the former expression "mentally in- lunatic or person non compos metis."

§ 31-17. Commissions.

All guardians having the care of the estates of minors and mentally incompetent persons shall have the same commissions for their services as are allowed by law to executors, administrators and other trustees.

1942 Code § 8621; 1932 Code § 8621; Civ. C. '22 § 5551; Civ. C. '12 § 3771; Civ. C. '02 § 2681; G. S. 2052; R. S. 2180; 1880 (17) 463; 1952 (47) 2042.

Effect of amendment.—The expression “mentally incompetent persons” was formerly “idiots, insane persons and persons non compos mentis.”

CHAPTER 3.**PUBLIC GUARDIANS.**

Sec.

31-101. When judge of probate appointed guardian.

31-102. Application for such appointment.

31-103. Order of appointment.

Sec.

31-104. Powers and liabilities of such guardian; compensation.

31-106. Transfer of estates on formation of new counties.

31-108. Reports of public guardian.

§ 31-101. When judge of probate appointed guardian.

The judge of probate for each county in this State shall be required to act as the guardian of the estate of a minor or mentally incompetent person in his respective county when the minor or mentally incompetent person has no general or testamentary guardian and when it is satisfactorily made to appear to the court of common pleas, or a judge of such court at chambers, on a petition filed for that purpose (and on proof that the notice of the object of the petition, together with a statement of the nature, condition and value of the estate of the minor or mentally incompetent person has been inserted once a week for two weeks previously in some public newspaper published in the county or, if there be none, in some adjoining county and also at the door of the courthouse) that no fit, competent and responsible person can be found who is willing to assume such guardianship. Any judge of probate appointed as such guardian and his sureties shall be held responsible upon his official bond for all estates of such minors and mentally incompetent persons received by him.

1942 Code § 8623; 1932 Code § 8623; Civ. C. '22 § 5553; Civ. C. '12 § 3773; Civ. C. '02 § 2680; G. S. 2051; R. S. 2179; 1880 (17) 463; 1891 (20) 1121; 1952 (47) 2042.

Effect of amendment.—The amendment substituted the expression “mentally incompetent person” for “idiot or lunatic.”

§ 31-102. Application for such appointment.

The application for the appointment of the judge of probate as such guardian (1) shall be made by the father, mother, husband, brother, executor, administrator or other person interested in the minor or mentally incompetent person, (2) shall state (a) the name and age of the minor or mentally incompetent person, (b) the character and value of his estate, (c) that such minor or mentally incompetent person has no general or testamentary guardian and (d) that no fit, competent or responsible person can be found who is willing to assume the trust and (3) shall be subscribed and sworn to by the party making the application.

1942 Code § 8624; 1932 Code § 8624; Civ. C. '22 § 5554; Civ. C. '12 § 3774; Civ. C. '02 § 2681; G. S. 2052; R. S. 2180; 1880 (17) 463; 1952 (47) 2042.

Effect of amendment.—The amendment changed the expression “idiot or lunatic” to “mentally incompetent person.”

§ 31-103. Order of appointment.

The court or judge hearing such application, if satisfied that the interest of the minor or mentally incompetent person would be best served by such appointment, shall endorse on such application an order appointing the judge of probate

as guardian and authorizing him to receive the estate and to sign and seal all necessary and proper releases and discharges relating thereto.

1942 Code § 8625; 1932 Code § 8625; Civ. C. '22 § 5555; Civ. C. '12 § 3775; Civ. C. '02 § 2681; G. S. 2052; R. S. 2180; 1880 (17) 463; 1952 (47) 2042.

Effect of amendment.—The expression “mentally incompetent person” has been substituted for “idiot or lunatic.”

§ 31-104. Powers and liabilities of such guardian; compensation.

Editor's note.—The reference to the 1942 Code in the historical citation to this section should read “1942 Code § 8626.”

§ 31-106. Transfer of estates on formation of new counties.

When a new county has been formed or created out of portions of an old county or counties, the probate judge for such new county shall act as guardian of the estates of minors or mentally incompetent persons formerly residing in that portion of the old county or counties taken into the new county when such minors or mentally incompetent persons now reside in the new county and a judge of probate of the old county or any of the old counties is acting as their guardian. Any such probate judge of an old county shall, upon application of any one in their behalf, turn over and deliver to the probate judge of the new county the estates of such minors or mentally incompetent persons and the probate judge of the new county shall receive them as guardian and shall be guardian thereof in lieu of the probate judge of the old county. In case the probate judge of the old county refuses or fails, within ten days after being requested so to do, to turn over and deliver such estates of the minors or mentally incompetent persons formerly in his county but presently residing in the new county, the person making the application may apply to any circuit judge in this State, at chambers, upon four days' notice, for an order requiring the probate judge to comply with the provisions of this section. Any probate judge who fails or refuses to turn over and deliver any such estate shall be liable to pay all costs of the proceeding, including reasonable counsel fees which shall be fixed by the court in its order. No commissions shall be charged or collected by either probate judge for delivering the estates or for removing them.

1942 Code § 8632; 1932 Code § 8632; Civ. C. '22 § 5562; Civ. C. '12 § 3782; 1906 (25) 9; 1952 (47) 2042.

Effect of amendment.—The amendment substituted the phrase “mentally incompetent persons” for “idiots and lunatics.”

§ 31-108. Reports of public guardian.

The judge of probate for each county in this State shall annually, at the first term of the court of common pleas in and for his county, and more often if required by the presiding judge of the circuit, submit in open court a report, under oath, of all his acts and doings as such public guardian. Such report, if satisfactory, shall be approved by the presiding judge by endorsement thereon and shall be filed in the office of the clerk of the court of common pleas of the county.

The annual report of the judge of probate, as public guardian, required by this section, shall (a) state the name of each minor or mentally incompetent person, (b) the date when the judge was appointed guardian of such person, (c) the value of the estate of each ward, (d) of what each estate consists, (e) the amount and character of the investments, if any, when and by whom made and what amount, if any, remains uninvested, (f) the amounts received and paid out since the last report, properly vouched, and (g) such recommendations as he may deem most to the advantage of his respective wards.

1942 Code § 8627; 1932 Code § 8627; Civ. C. '22 § 5557; Civ. C. '12 § 3777; Civ. C. '02 § 2684; G. S. 2053; R. S. 2183; 1880 (17) 464; 1952 (47) 2042.

Effect of amendment.—The amendment changed the expression “idiot or lunatic” to “mentally incompetent person.”

CHAPTER 4.

UNIFORM VETERANS' GUARDIANSHIP ACT.

Sec.

31-220. Administrator party to certain proceedings.

Sec.

31-224 to 31-226. [Repealed.]

§ 31-219. Final discharge of guardian.

The failure of the guardian for an incompetent person to obtain a final discharge does not incapacitate the former ward from prosecuting an action in his own name upon fire insurance policies

taken out by him after he has been adjudged competent by the Veterans Administration. *Palmer v. Lititz Mut. Ins. Co.*, 113 F. Supp. 857 (1953).

§ 31-220. Administrator party to certain proceedings.

The Administrator or his successor is and shall be a party in interest (a) in any proceeding brought under any law of this State for the appointment, confirmation, recognition or removal of any guardian of a minor or of a mentally incompetent person to whom or on whose behalf benefits have been paid or are payable by the Veterans' Administration, its predecessor or successor, (b) in any guardianship proceeding involving such person or his estate, (c) in any suit or other proceeding arising out of the administration of such person's estate or assets and (d) in any proceeding the purpose of which is the removal of the disability of minority or of mental incompetency of such person. In any case or proceeding involving property or funds of such minor or mentally incompetent person not derived from the Veterans' Administration, the Veterans' Administration shall not be a necessary party but may be a proper party to such proceedings. This section shall not apply unless the Veterans' Administration shall designate, in writing filed with the Secretary of State, its chief attorney, acting chief attorney or other agent within this State as a person authorized to accept service of process or upon whom process may be served.

1942 Code § 8640; 1932 Code § 8640; 1929 (36) 262; 1941 (42) 280; 1952 (47) 2042.

Effect of amendment.—The new section omits a reference to an "insane" person which was contained in the former section.

§§ 31-224 to 31-226. Commitment to Veterans' Administration and transfer thereto from State Hospital; fee of Chester probate judge.

Repealed by A. & J. R. 1952 (47) 2042.

Title 32.
Health.

- Chap.
1. Boards of Health and Health Officers, §§ 32-196 to 32-419.

3. General Health Provisions, Certain Particular Diseases and Sterilization, §§ 32-555 to 32-613.

4. Hospitals, Clinics, Health Centers and Tuberculosis Camps, §§ 32-829 to 32-886.4.

5. Mentally Ill or Deficient Persons, §§ 32-891 to 32-992.3.

6. Other Provisions Regarding Mentally Ill or Deficient Persons, §§ 32-1001 to 32-1009.

7. [Repealed.]

8. Vital Statistics, §§ 32-1124 to 32-1170.11.

9. Water, Sewage, Garbage, etc., §§ 32-1275 to 32-1275.5.

12. Milk and Milk Products and Limitations Thereof; Oleomargarine, §§ 32-1609.11 to 32-1710.

CHAPTER 1.

BOARDS OF HEALTH AND HEALTH OFFICERS.

- Article 9.1.

Chesterfield County Board of Health.

Sec.

32-196. Established, duties, etc.
- Article 17.1.

Pickens County Board of Health.

32-335. Established, duties, etc.
- Article 15.

Kershaw County Board of Health.

32-301. Health department and director.

32-304. Additional personnel.
- Article 20.

Spartanburg County Board of Health and Health Department.

32-410. Spartanburg County board of health and health department.

32-411 to 32-419. [Repealed.]
- Article 16.1.

Marlboro County Board of Health.

32-335.1. Chairman; secretary; rules and regulations; meetings; per diem; travel expenses.

ARTICLE 1.

State Board of Health and Executive Committee

- § 32-2. Duties in general.

Health Department is preeminent in matters of public health and protection of the people from contaminated foods. Atty. Gen. Op., Apr. 1, 1954.
- § 32-8. Committee may promulgate and enforce rules for public health.

Rules and regulations promulgated under authority of this section, see Rules and regulations, Health, State Board of, in volume 7. This section is comprehensive enough for Health Department to accomplish same purpose intended by 1953 amendment to § 32-1710. Atty. Gen. Op., Apr. 1, 1954.

ARTICLE 9.1.

Chesterfield County Board of Health.

- § 32-196. Established, duties, etc.

Provisions of A. & J. R. 1953 (48) 297 make up this section.

ARTICLE 15.

Kershaw County Board of Health.

- § 32-301. Health department and director.

Amended by A. & J. R. 1953 (48) 194.
- § 32-304. Additional personnel.

Amended by A. & J. R. 1953 (48) 194.

ARTICLE 16.1

*Marlboro County Board of Health.***§ 32-335.1. Chairman; secretary; rules and regulations; meetings; per diem; travel expenses.**

Provisions from A. & J. R. 1954 (48) 1840 make up this section.

§ 32-336. Duties and powers.

Amended by A. & J. R. 1954 (48) 1840.

ARTICLE 17.1.

*Pickens County Board of Health.***§ 32-355. Established, duties, etc.**

Provisions of A. & J. R. 1953 (48) 483 make up this section.

ARTICLE 20.

*Spartanburg County Board of Health and Health Department.***§ 32.410. Spartanburg County board of health and health department.**

Provisions from A. & J. R. 1952 (47) 2134 make up this section.

§§ 32-411 to 32-419. Spartanburg County health board.

Repealed by A. & J. R. 1952 (47) 2134.

Cross reference.—See now § 32-410.

CHAPTER 3.

GENERAL HEALTH PROVISIONS, CERTAIN PARTICULAR DISEASES AND
STERILIZATION.**Article 1.****General Provisions.****Article 4.****Cancer.**

Sec.

32-555. Instilling prophylactic to prevent blindness within one hour after birth.

Sec.

32-613. Clinic a branch of Medical College.

ARTICLE 1.

*General Provisions.***§ 32-555. Instilling prophylactic to prevent blindness within one hour after birth.**

Every doctor, midwife, nurse or other person attending the delivery at birth of a child in the State shall instill, or have instilled, into the eyes of the baby, within one hour after birth, some effective prophylactic approved by the State Department of Health for prevention of blindness from ophthalmia neonatorum. A record of such administration or instillation shall be reported on the birth certificate, showing the time with respect to the birth and the kind of prophylactic administered.

1942 Code, § 50431; 1939 (41) 159; 1954 (48) 1763.

Effect of amendment.—The amendment eliminated requirement for instillation of silver nitrate solution.

ARTICLE 4.

*Cancer.***§ 32-613. Clinic a branch of Medical College.**

This clinic and all personnel therein shall be considered as one of the departments or subdivisions of The Medical College of South Carolina and, as a part of the facilities of the college, it shall be under the direction of the dean, as are all other

divisions of the college. The selection of the Director and all clinic personnel shall be made in the same manner and their relationship to the college shall be the same as in the case of personnel in the other departments and in staff positions of the college.

1947 (45) 539; 1952 (47) 1875.

Effect of amendment.—The amendment reflects the change of name of the institution from “The Medical College of the State of South Carolina” to “The Medical College of South Carolina.”

CHAPTER 4.

HOSPITALS, CLINICS, HEALTH CENTERS AND TUBERCULOSIS CAMPS.

Article 3.
County, Township or Municipal Hospitals, Clinics or Tuberculosis Camps.
Sec.
32-829. [Repealed.]

Article 7.
The South Carolina Sanatorium.
32-885. Created.
32-885.1. Trustees; appointment; terms; removal; vacancy.
32-885.2. Meetings; quorum.
32-885.3. Compensation and expenses.
32-885.4. Duties and powers.

Sec.
32-885.5. Expenditures under supervision of board.
32-885.6. Patients required to pay when able to do so.

Article 8.
Alcoholic Rehabilitation Center.
32-886. Authorized.
32-886.1. Location; duties and powers of Commission.
32-886.2. Director of adult education for the prevention of alcohol.
32-886.3. Commission and director work with other groups.
32-886.4. Admission.

ARTICLE 2.

State Hospital Construction Act, Operation of Hospitals.

§ 32-761. **Title of article.**
Cited in Bolt v. Cobb, -----, S. C. -----,
82 S. E. (2d) 789 (1954).

ARTICLE 3.

County Township or Municipal Hospitals, Clinics or Tuberculosis Camps.

§ 32-822. **Tax for care of indigent patients at Camden hospital.**
Cited in Bolt v. Cobb, ----- S. C. -----,
82 S. E. (2d) 789 (1954).

§ 32-829. **Spartanburg venereal clinic.**
Repealed by A. & J. R. 1952 (47) 2134.
Cross reference.—See now § 32-410.

ARTICLE 7.

The South Carolina Sanatorium.

§ 32-885. **Created.**
There is hereby created the South Carolina Sanatorium for the purpose of treating citizens of this State who are suffering from tuberculosis. The sanatorium shall consist of all State-owned facilities for the care and treatment of tuberculosis.
1953 (48) 149.

§ 32-885.1. **Trustees; appointment; terms; removal; vacancy.**
The Governor, by and with the advice and consent of the Senate, shall appoint a board of seven members which shall be known as the board of trustees for the South Carolina Sanatorium. The membership of the board shall be as follows: one member shall be appointed from each of the six congressional districts of the State and one member shall be appointed from the State at large. The member appointed at large shall be chairman of the board. Subject to removal by the Governor for

cause, the terms of members of the board shall be four years, except that the terms of office of initial members were so designated that the terms of two members were for four years, two for three years, two for two years and the term of one member for one year. Any vacancy occurring shall be filled by the Governor for the balance of the term of the member concerning whom the vacancy arises.

1953 (48) 149.

§ 32-885.2. Meetings; quorum.

The board of trustees shall meet within one month after being appointed. Thereafter the board shall meet on call of the chairman or a majority of its members, but the board shall meet at least once every three months. Four members shall constitute a quorum for the transaction of any business.

1953 (48) 149.

§ 32-885.3. Compensation and expenses.

The members of the board shall serve without compensation, but they shall receive mileage and per diem when on official business at the rate provided by law for officers of the State.

1953 (48) 149.

§ 32-885.4. Duties and powers.

The board shall have the following rights, powers and duties:

(1) It shall form a body corporate in deed and in law with all the powers incident to corporations.

(2) It shall be vested with title to the property, real and personal, which constitutes the South Carolina Sanatorium.

(3) It shall have charge and exercise general supervision over the operation and maintenance of the South Carolina Sanatorium and shall determine policies governing admission to the sanatorium.

(4) It may accept grants from the Federal government and gifts of any kind from any other source.

(5) It shall appoint and may, in its discretion, remove a superintendent of the South Carolina Sanatorium. Subject to the approval of the board, the superintendent shall have the power to appoint and remove all employees of the sanatorium.

(6) It shall fix the compensation of all officers and employees of the sanatorium, subject to approval of the Budget and Control Board.

(7) It shall submit an annual report to the Governor before the fifteenth day of January of each year setting forth its activities, the state and condition of the sanatorium and any other statistical information which is usually required of facilities of the type over which it has charge. The report shall include any recommendations which, in the opinion of the board, will improve the program of the sanatorium. A copy of the report shall also be submitted to the General Assembly.

(8) It shall submit annually to the Budget and Control Board its requests for appropriations for operation, maintenance or other necessary purposes for the following fiscal year.

1953 (48) 149.

§ 32-885.5. Expenditures under supervision of board.

All funds now or hereafter appropriated for the operation and maintenance of the sanatorium shall be expended under the supervision of the board.

1953 (48) 149.

§ 32-885.6. Patients required to pay when able to do so.

Patients who are able to pay for their medical care and hospitalization shall be required to do so.

1953 (48) 149.

Cross reference.—See § 32-950.25 for lien for care and treatment.

ARTICLE 8.

*Alcoholic Rehabilitation Center.***§ 32-886. Authorized.**

The South Carolina Mental Health Commission shall set up on State property an alcoholic rehabilitation center for the care and treatment of persons suffering from alcoholism.

1954 (48) 1751.

§ 32-886.1. Location; duties and powers of commission.

The Commission shall determine the exact location of the center and shall exercise the same degree of control over the supervision and operation of the center as it exercises over other State mental health facilities. The Commission shall promulgate rules and regulations, determine policies governing the admission, minimum stay, care and treatment of patients, determine costs and set a uniform rate for the maintenance of patients which shall not be in excess of the actual cost of care and treatment.

1954 (48) 1751.

§ 32-886.2. Director of adult education for the prevention of alcoholism.

The Commission shall appoint a Director of Adult Education for the prevention of alcoholism who shall be responsible for activating and implementing an adequate alcoholic educational program for the citizens of this State above high school age. The program shall be designed to reduce or prevent alcoholism in South Carolina and to create a recognition and understanding of the problem.

1954 (48) 1751.

§ 32-886.3. Commission and Director work with other groups.

In carrying out the provisions of this article the Commission and the Director may consult and work in conjunction with groups such as Alcoholics Anonymous, the Research Council on Problems of Alcohol of the American Association for the Advancement of Science, the South Carolina Medical Association, the Christian Action Council, the Committee on Alcoholism of the South Carolina Conference of Social Work and other groups or agencies that are able to assist in the study, treatment and rehabilitation of alcoholics and in a scientific educational program on the problems of alcoholism.

1954 (48) 1751.

§ 32-886.4. Admission.

Admission to the center shall be voluntary only and shall be limited to residents of this State.

1954 (48) 1751.

CHAPTER 5.

MENTALLY ILL OR DEFICIENT PERSONS.

Article 1.
Definitions.

Sec.
32-891. Definitions.

Article 2.
South Carolina Mental Health Commission.

- 32-892. South Carolina Mental Health Commission.
32-893. Duties and powers of Commission.
32-894. Control of mental facilities.
32-895. Records; reports of superintendents; investigations; rules and regulations.
32-896. Director of Mental Health.
32-897. Director to be executive secretary of Commission; other functions.
32-898. Annual report of Commission.

Article 3.
Mental Health Facilities.

- Sec.
32-899. Facilities to be maintained.
32-899.10. Designation of buildings at State Penitentiary as part of State Hospital.
32-900. Areas of State training school.
32-901. Establishment of clinics.
32-902. Superintendents and other employees of mental health facilities.
32-903. Employment of marshals.
32-904. Authority of marshals of such facilities.
32-905. Salaries of employees.
32-906. Employees of such facilities exempt from jury and military duty.
32-907. Contracts of such facilities.

Sec.

32-908. Granting easements, etc.

Article 4.**Admission to and Discharge from
State Hospitals.**

- 32-909. Voluntary admission of mentally ill to State hospitals.
 32-910. Discharge of voluntary patients from hospitals.
 32-911. Same; upon request.
 32-912. Admission to State hospital on motion of guardian, relative, etc.
 32-913. No such admission more than fifteen days after examination.
 32-914. When such individual taken into custody.
 32-915. Admission to State hospitals on motion of any person.
 32-916. Within what time such person must be admitted.
 32-917. Certificate authorizes taking individual in custody.
 32-918. Commitment to hospitalization; application therefor.
 32-919. Same; notice of application.
 32-920. Examination of patient.
 32-921. Effect of examiners' report.
 32-922. Hearing on report.
 32-923. Order after hearing.
 32-923.1. Time after order admit to a State mental health facility.
 32-924. Commitment to private hospital.
 32-925. Appointment of committee.
 32-926. Appeal to court of common pleas.
 32-927. Admission of person charged with crime to State hospital.
 32-928. Subsequent release or continued custody of such person.
 32-929. Notification of admission to State Hospital.
 32-930. Discharge of certain State hospital patients.
 32-931. Notice of right to apply for discharge.
 32-931.10. When patient statistically discharged.
 32-932. Re-examination of order of confinement for involuntary hospitalization.

Article 5.**Admission to and Discharge from
State Training Schools.**

- 32-933. Voluntary admission of mentally defective to a training school.
 32-934. Commitment to State training school.
 32-935. Same; notice of application.
 32-936. Examination of individual.
 32-937. Effect of examiners' report.
 32-938. Hearing on report.
 32-939. Order of court.
 32-940. Commission's action prerequisite to order.
 32-941. Appeal to court of common pleas.
 32-942. Discharge.
 32-943. Leave of absence and revocation thereof.

Sec.

- 32-944. Order for recommitment of person escaped or on revoked leave.
 32-945. Penalty for harboring or interfering with return of such person.

Article 6.**Federal Institutions.**

- 32-946. Placement in Federal institutions.
 32-947. Authority and powers of such institutions in such cases.
 32-948. State courts retain right to determine necessity for continued confinement.
 32-949. Jurisdiction of foreign courts over persons in Federal institutions.
 32-950. Transfer to Federal agency.

Article 7.**Provisions Affecting All State Mental
Health Facilities.**

- 32-950.1. Persons in other State institutions mentally ill or defective.
 32-950.2. Persons in jail mentally ill.
 32-950.2-1. Patients in nonresident institution whose parent or guardian has moved to this state.
 32-950.2-2. Residents ordered to facility in another state.
 32-950.3. Forms to be kept in each county.
 32-950.4. Custody pending removal to State
 32-950.5. Transportation to State mental health facility.
 32-950.6. Examinations.
 32-950.7. Transfers by Commission.
 32-950.8. Transfer on request of guardian, etc.
 32-950.9. Periodic examination of patients and trainees; discharge.
 32-950.10. Conditional and final discharge of improved patient.
 32-950.11. Recommitment of conditionally discharged or escaped patient.
 32-950.12. Communication privileges of patients and trainees.
 32-950.13. Habeas corpus.
 32-950.14. Disclosure of records.
 32-950.15. Removal of nonresident patient or trainee.
 32-950.16. Patient or trainee not a citizen of United States.
 32-950.17 to 32-950.21. [Repealed.]
 32-950.22. Charges for mental health facilities.
 32-950.23. Liability of estate of deceased patient or trainee for State care.
 32-950.24. Commission may contract for care and treatment.
 32-950.25. Lien for care and treatment.
 32-950.26. Sexual intercourse with patient or trainee.
 32-950.27. Infirm or otherwise harmless mental defective or epileptic.
 32-950.28. Discharges; effect of; court reports.
 32-950.29. Discharge or leave of absence of person confined by judicial proceedings.
 32-950.30. Unwarranted confinement or denial of right hereunder.

Sec.
32-951 to 32-988. [Repealed.]

**Article 8.
Committee.**

32-990. Petition for appointment; party defendants; service of papers; guardian ad litem for the defendant.

32-990.1. Certificates received when person a patient or trainee.

32-990.2. Examination and hearing when person not a patient or trainee.

32-990.3. Hearing when such certificate attached petition.

Sec.
32-990.4. Appointment of committee.
32-990.5. Appeal from such order.
32-990.50. When superintendent of State Hospital may act for patient therein.

**Article 9.
Re-examination of Sanity.**

32-992. Petition.

32-992.1. Hearing; investigation.

32-992.2. Effect of determination of sanity.

32-992.3. Appeal.

ARTICLE 1.

Definitions.

§ 32-891. Definitions.

(4) *Licensed physician* means an individual licensed by the State Board of Medical Examiners under the laws of this State to practice medicine or a medical officer of the Government of the United States while in this State in the performance of his official duties.

(10) Regular discharge means an absolute release or dismissal from an institution.

(11) Conditional discharge, trial visit or leave of absence means qualified release or a qualified dismissal from an institution.

(17) *State of Citizenship* means the last state in which a person resided for one or more consecutive years, exclusive of time spent in public or private hospitals and penal institutions or on parole or unauthorized absence therefrom and of time spent in service in any of the armed forces of the United States. The residence of a person shall be determined by the actual physical presence, not by the expressed intent of such person.

1952 (47) 2042; 1954 (48) 1732.

Effect of amendment.—1954 amendment added “by the State Board of Medical Examiners” in paragraph (4), added “Regular” in paragraph (10), added “trial visit” in paragraph (11) and in paragraph (17)

changed “the” to “a” in the first line, changed “two” to “one” and added all after “years.”. The section was otherwise unaffected and is not reproduced.

ARTICLE 2.

South Carolina Mental Health Commission.

§ 32-892. South Carolina Mental Health Commission.

The Governor shall, with the advice and consent of the Senate, appoint a board of regents, which shall be known as the South Carolina Mental Health Commission and shall also be the South Carolina Mental Health Authority. The Commission shall consist of five members, whose terms of office shall be so designated that the term of one member shall expire each year, subject to removal by the Governor for cause.

1952 (47) 2042.

§ 32-893. Duties and powers of Commission.

The Commission shall have the following rights, powers and duties:

(1) *Corporate powers.* It shall form a body corporate in deed and in law with all the powers incident to corporations;

(2) *Cooperation with penal institutions.* It shall cooperate with persons in charge of penal institutions in this State for the purpose of providing proper care and treatment for mental patients confined therein because of emergency;

(3) *Education and public relations program.* It shall inaugurate and maintain an appropriate mental health education and public relations program; and

(4) *Investigations and studies.* It shall collect statistics bearing on mental illness, mental deficiency, epilepsy, drug addiction and alcoholism, as well as study the cause, pathology and prevention of mental defects and diseases and shall provide moral and vocational training and medical and surgical treatment which will tend to the mental and physical betterment of patients and which shall be designed to lessen the increase of mental illness, mental defectiveness, epilepsy, drug addictions and alcoholism and it shall encourage the superintendents of institutions and their medical staffs in the investigation and study of these subjects and of mental hygiene in general.

1952 (47) 2042.

§ 32-894. Control of mental facilities.

The Commission shall have charge of all State mental health facilities and shall have sole charge of the regulation, licensing and inspection of all hospitals or other institutions in this State insofar as they are equipped to provide in-patient care, treatment or training for the mentally ill, mentally defective, epileptic, senile, drug addicted or alcoholic.

1952 (47) 2042.

§ 32-895. Records; reports of superintendents; investigations; rules and regulations.

The Commission may:

(1) Prescribe the form of applications, records, reports and medical certificates provided for under this chapter and the information required to be contained therein,

(2) Require reports from the superintendent of any institution relating to the admission, examination, diagnosis, discharge or conditional discharge of any patient,

(3) Investigate complaints made by any patient or by any person on behalf of a patient and

(4) Adopt such rules and regulations not inconsistent with the provisions of this chapter as it may find to be reasonably necessary for the government of all institutions over which it has authority and of State mental health facilities and the proper and efficient institutionalization of the mentally ill, mentally defective, epileptic, senile, drug addicted or alcoholic, but any person affected thereby shall have the right to appeal therefrom to any court of record.

1952 (47) 2042.

§ 32-896. Director of Mental Health.

The Commission may appoint and in its discretion remove a State Director of Mental Health, who shall be a medical doctor specializing in the field of psychiatry, and may appoint in its discretion remove superintendents of the state mental health facilities, except as otherwise provided in this chapter.

1952 (47) 2042.

§ 32-897. Director to be executive secretary of Commission; other functions.

The Director shall be the executive secretary of the Commission and may be the superintendent of one of the State mental health facilities. His power and duties shall be prescribed by the Commission.

1952 (47) 2042.

§ 32-898. Annual report of Commission.

The Commission shall submit an annual report to the Governor before the eleventh day of January of each year setting forth its activities, the financial affairs and the state and condition of the State mental health facilities and any other statistical information which is usually required of facilities of the type over which it has charge, including any recommendations which in the opinion of the Commission will

improve the mental health program of the State. A copy of such report shall also be submitted to the General Assembly.

1952 (47) 2042.

ARTICLE 3.

Mental Health Facilities.

§ 32-899. Facilities to be maintained.

The following facilities shall continue in existence and shall be maintained for the following purposes:

(1) The South Carolina State Hospital, comprising two divisions, one at Columbia and one at State Park, shall be maintained for the care and treatment of persons who are mentally ill and those persons accused of crime who have been admitted to the hospital in accordance with the provisions of § 32-927.

(2) Two State training schools, Whitten Village, Laurens County, and Pine-land, Richland County, shall be maintained as schools, hospitals and colonies for the care, treatment and training of persons who are mentally deficient or emotionally disturbed and such other persons under sixteen years of age who may be admitted upon approval of the Commission for the purpose of examination, adjustment, treatment or training, and

(3) The mental health clinics shall be maintained for the diagnosis, treatment and prevention of mental illness.

1952 (47) 2042; 1954 (48) 1732.

Effect of amendment.—1954 amendment designated the divisions of State Hospital and provided for “admitted” persons accused of crime instead of such persons

“committed” and generally enlarged paragraph (2). Whitten Village was formerly The State Training School, A. & J. R. 1950 p. 1747.

§ 32-899.10. Designation of buildings at State Penitentiary as part of State Hospital.

The Commission may, in mutual agreement with the authorities of the State Penitentiary, designate any building or any portion thereof at the State Penitentiary as a part of the State Hospital and may, whenever in its opinion such would contribute to the patient's safety, care or treatment or to the safety, care or treatment of other patients, transfer to such buildings or parts thereof any patient admitted under § 32-927. The State Hospital shall have primary responsibility for the medical and psychiatric care and treatment of such patients, but the State Penitentiary shall have primary responsibility for the maintenance and security of all such patients.

1954 (48) 1732.

§ 32-900. Areas of State training school.

Any State training school may be organized into the following areas:

(1) A school area, the purpose of which shall be to establish, promote and maintain a child development center in which supervision and training are organized to supply the needs, to the best degree possible, of those persons admitted thereto;

(2) A hospital area, the purpose of which shall be to provide nursing, supervision, recreation and any form of elementary training considered proper for the attainment of better living, to as high a degree as possible, for all persons admitted thereto; and

(3) A home area, the purpose of which shall be to provide custody, care, supervision and such vocational instruction as is deemed practical for adults and other persons who may be considered incapable of profiting satisfactorily from instruction and residence in the school area.

1952 (47) 2042.

§ 32-901. Establishment of clinics.

The Commission shall establish mental health clinics throughout the State and shall supervise them.

1952 (47) 2042.

§ 32-902. Superintendent and other employees of mental health facilities.

The superintendents of all State mental health facilities shall be medical doctors or psychiatrists who are specially trained in their respective fields. The superintendents of the State mental health facilities may appoint and remove all employees of the facility over which they have charge, subject to the approval of the Commission. But the superintendent of the State Hospital may appoint and, in his discretion, remove all other officers and employees of institutions maintained by this State for the mentally ill, subject to the approval of the Commission.

1952 (47) 2042.

§ 32-903. Employment of marshals.

The Commission may authorize the superintendents to employ suitable persons to act as marshals to keep intruders off and prevent trespass upon State mental health facilities.

1952 (47) 2042.

§ 32-904. Authority of marshals of such facilities.

The marshals employed, insofar as State mental health facilities are concerned, shall be vested with all the powers and charged with all the duties of police officers generally. They may eject trespassers. They may, without warrant, arrest persons guilty of disorderly conduct or of trespass on State mental health facilities and have them tried in any court of competent jurisdiction.

1952 (47) 2042.

§ 32-905. Salaries of employees.

The Commission shall fix the amount of the salaries or emoluments of all officers and employees of State mental health facilities.

1952 (47) 2042.

§ 32-906. Employees of such facilities exempt from jury and military duty.

All officers and employees of State mental health facilities shall be exempted from serving on juries and from all State military duty.

1952 (47) 2042.

§ 32-907. Contracts of such facilities.

No member of the Commission or officer or employee of any State mental health facility shall be financially benefited by any contract or purchase made by any State mental health facility.

1952 (47) 2042.

§ 32-908. Granting easements, etc.

The Commission may, by resolution recorded on the minutes of its meetings, grant easements, permits or rights of way on, over or under the grounds of the facilities, but none may be granted unless approved in writing by the Attorney General before delivery.

1952 (47) 2042.

ARTICLE 4.*Admission to and Discharge from State Hospitals.***§ 32-909. Voluntary admission of mentally ill to State hospitals.**

The superintendent of a private hospital may, and, subject to the availability of suitable accommodations and if in the judgment of the superintendent the person is a proper subject for voluntary admission, the superintendent of a State hospital shall, admit for observation, diagnosis, care and treatment any individual who is:

(1) Mentally ill or has symptoms of mental illness and who, being twenty-one years of age or over, applies therefor; or

(2) Mentally ill or has symptoms of mental illness and is under twenty-one years of age, if his parent or legal guardian applies therefor in his behalf.

1952 (47) 2042.

§ 32-910. Discharge of voluntary patients from hospitals.

The superintendent of a hospital shall discharge any voluntary patient who has recovered or whose detention he determines to be no longer advisable. He may also discharge any voluntary patient if to do so would, in his judgment, contribute to the hospital's most effective use in the care and treatment of its patients.

1952 (47) 2042.

§ 32-911. Same upon request.

A voluntary patient who requests his discharge or whose discharge is requested in writing, by his legal guardian, parents, parent with custody, county governing body, spouse or adult next of kin shall be discharged forthwith except that:

(1) Any request for such a discharge may be denied by the superintendent of a State hospital if the request is made sooner than thirty days after admission;

(2) If the patient was admitted on his own application and the request for discharge is made by a person other than the patient, discharge may be conditioned upon the agreement of the patient thereto;

(3) If the patient by reason of his age, was admitted on the application of another person, his discharge, prior to becoming twenty-one years of age, may be conditioned upon the consent of his parent or guardian; and

(4) If the superintendent of the hospital, within seven days from the receipt of the request, files with the probate court of the county in which the patient resided immediately prior to his admission a certification that, in his opinion, the discharge of the patient would be unsafe for the patient or others, discharge may be postponed on application for as long as the court determines to be necessary for the commencement of proceedings for judicial admission, but in no event for more than fifteen days.

1952 (47) 2042.

§ 32-912. Admission to State hospital on motion of guardian, relative, etc.

Any individual may, subject to the availability of suitable accommodations be admitted to a State hospital upon:

(1) Written application to the hospital by a friend, relative, spouse, custodian or guardian of the individual or the superintendent of any medical institution in which such individual may be; and

(2) A certification by two designated examiners that they have jointly examined the individual and that they are of the opinion that he is mentally ill and (a) Is in need of care and treatment in a hospital and, because of his condition, lacks sufficient insight or capacity to make responsible application therefor or (b) Because of his condition is likely to injure himself or others.

1952 (47) 2042.

§ 32-913. No such admission more than fifteen days after examination.

An individual with respect to whom such a certificate has been issued may not be admitted on the basis thereof at any time after the expiration of fifteen days after the date of examination, exclusive of any period of temporary detention authorized under § 32-950.4.

1952 (47) 2042.

§ 32-914. When such individual taken into custody.

The certificate, referred to in § 32-912, if it states a belief that the individual is likely to injure himself or others, shall, upon endorsement by a judge of any probate court of the county in which the individual is resident or present, authorize any police officer, preferably in civilian clothes, to take the individual into custody and transport him to the hospital designated in the application.

1952 (47) 2042.

§ 32-915. Admission to State hospitals on motion of any person.

Any individual may, subject to the availability of suitable accommodations, be admitted to a State hospital upon:

(1) A written application to the hospital by any person stating his belief that the individual is likely to cause injury to himself or others if not immediately restrained and the grounds for this belief; and

(2) A certification, in triplicate, by at least one licensed physician, that he has examined the individual and is of the opinion that the individual is mentally ill and, because of his condition, is likely to injure himself or others if not immediately restrained.

1952 (47) 2042.

§ 32-916. Within what time such person must be admitted.

An individual with respect to whom such a certificate, as is mentioned in § 32-915, has been issued may not be admitted on the basis thereof at any time after the expiration of three days after the date of examination.

1952 (47) 2042.

§ 32-917. Certificate requires taking individual in custody.

The certificate, referred to in § 32-915, shall authorize and require any police officer, preferably in civilian clothes, to take the individual into custody and transport him to the hospital designated in the application. Within forty-eight hours after taking the individual into custody the police officer shall obtain an endorsement of the certificate by the judge of probate of the county in which the individual is taken into custody. If the judge of probate refuses to endorse the certificate he shall state thereon his reasons for his refusal and immediately transmit it to the hospital concerned and the hospital shall discharge the patient immediately unless the superintendent thereof forthwith files the certificate to initiate action as provided in § 32-911.

1952 (47) 2042; 1954 (48) 1732.

Effect of amendment.—The amendment added “and require” on line one.

§ 32-918. Commitment to hospitalization; application therefor.

Proceedings for the involuntary hospitalization of an individual may be commenced by the filing of a written application with the probate court by a friend, relative, spouse or guardian of the individual or the superintendent of any public or private institution in which such individual may be. The application shall be accompanied by a certificate of a licensed physician stating that he has examined the individual and is of the opinion that he is mentally ill and should be hospitalized or a written statement by the applicant that the individual has refused to submit to an examination by a licensed physician.

1952 (47) 2042.

§ 32-919. Same; notice of application.

Upon receipt of such an application the court shall give notice thereof to the proposed patient, to his legal guardian, if any, and to his spouse, parents and nearest known other relative or friend. If, however, the court has reason to believe that notice would be likely to be injurious to the proposed patient, notice to him may be omitted.

1952 (47) 2042.

§ 32-920. Examination of patient.

As soon as practicable after notice of the commencement of the proceedings is given or it is determined that notice should be omitted, the court shall appoint two designated examiners to examine the proposed patient and report to the court their findings as to his mental condition and his need for custody, care or treatment in a hospital. The examination shall be held at a suitable place not likely to have a harmful effect upon the proposed patient's health. A proposed patient to whom notice of the commencement of proceedings has been omitted shall not be required to submit to an examination against his will. On the report

of the examiners of the refusal of a proposed patient to submit to examination the court shall give notice to the proposed patient as provided under § 32-919 and order him to submit to examination.

1952 (47) 2042.

§ 32-921. Effect of examiners' report.

If the report of the examiners is to the effect that they are of the opinion that the proposed patient is mentally ill the court shall forthwith fix a date for and give notice of a hearing to be held not more than fifteen days from receipt of the report. If the report of the examiners is divided or is to the effect that they are of the opinion the proposed patient is not mentally ill the court shall terminate the proceedings and dismiss the application.

1952 (47) 2042; 1953 (48) 504; 1954 (48) 1732.

Effect of amendment.—Prior to the 1953 days from receipt of the report." The 1954 amendment, the hearing was to be held amendment made no further change. "not less than ten nor more than fifteen

§ 32-922. Hearing on report.

All persons to whom notice is required to be given may appear at the hearing, testify and present and cross-examine witnesses and the court may receive the testimony of any other person. The proposed patient shall not be required to be present and the court may exclude all persons not necessary for the conduct of the proceedings. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The court shall receive all relevant and material evidence which may be offered. An opportunity to be represented by counsel shall be afforded to every proposed patient and, if neither he nor others provide counsel, the court shall appoint counsel for him.

1952 (47) 2042.

§ 32-923. Order after hearing.

If upon completion of the hearing and consideration of the record the court finds that the proposed patient is mentally ill and

(1) Is in need of custody, care or treatment in a hospital and because of his condition lacks sufficient insight or capacity to make responsible decisions with respect to his admittance to a hospital or

(2) Because of his condition is likely to injure himself or others

It shall order his hospitalization; otherwise, it shall dismiss the proceedings.

1952 (47) 2042.

§ 32-923.1. Time after order admit to a State mental health facility.

Any individual, with respect to whom such order of hospitalization has been issued, shall not be admitted to a State mental health facility on the basis thereof at any time after the expiration of thirty days following the date of the judicial order, unless the judge of probate, issuing such order, extends this date.

1954 (48) 1732.

§ 32-924. Commitment to private hospital.

Upon request by the proposed patient, his relative, spouse or guardian and agreement by the superintendent of the hospital concerned, the court may order the hospitalization of the patient in a private hospital. Neither the State, any county nor any municipality shall be liable for any costs of or charges for sending a proposed patient to a private hospital or connected with or arising out of his being sent there.

1952 (47) 2042.

§ 32-925. Appointment of committee.

Repealed by A. & J. R. 1954 (48) 1732.

Cross reference.—See now §§ 32-990 et seq.

§ 32-926. Appeal to court of common pleas.

The petitioner or any other interested person standing within the family relationship of the proposed patient may appeal from the order of the probate court to the court of common pleas of the county and a trial shall be had de novo with a jury in the same manner as civil actions are tried.

1952 (47) 2042.

§ 32-927. Admission of person charged with crime to State Hospital.

Any judge of the circuit court, county court or juvenile-domestic relations court may order admitted to the State Hospital any person charged with the commission of any criminal offense who shall, upon the trial before him, be adjudged mentally ill or in whom there is a question as to the relation of mental illness to the alleged crime, whether this question is raised by the prosecution or defense or appears to the judge from any evidence brought before him or upon his own recognition.

1952 (47) 2042; 1954 (48) 1732.

Effect of amendment.—1954 amendment extended authority to admit to judges of county and domestic-relations courts.

§ 32-928. Subsequent release or continued custody of such person.

At the end of thirty days any such person shall be returned to the court if found mentally competent or, if he is found mentally ill, then the superintendent of the hospital shall certify such finding to the court and shall retain the person as a patient subject to the further orders of the court. At any time thereafter upon the patient's recovery the court shall be notified.

1952 (47) 2042.

§ 32-929. Notification of admission to State hospital.

Whenever a patient has been admitted to a hospital pursuant to §§ 32-912 or 32-915 on the application of any person other than the patient's legal guardian, spouse or next of kin, the superintendent of the hospital shall promptly notify the patient's legal guardian, spouse or next of kin, if known.

1952 (47) 2042.

§ 32-930. Discharge of certain State hospital patients.

Any patient confined under the provisions of §§ 32-912 and 32-915, who requests to be discharged or whose discharge is requested in writing by the person who made the application for his admission, by his spouse, adult next of kin, legal guardian or friend shall be discharged within seven days after receipt of the request except that, such request may be denied by the superintendent of the State Hospital if the request be made sooner than thirty days after admission; and except also that, upon application to the probate court supported by a certification by the superintendent of the hospital that in his opinion discharge would be unsafe for the patient or for others, such discharge may be postponed for a period not to exceed fifteen days which the court may determine to be necessary for the commencement of proceedings for a judicial determination pursuant to §§ 32-918 to 32-926.

1952 (47) 2042, 1954 (48) 1732.

Effect of amendment.—1954 amendment increased parties requesting discharge to include person who made application for admission and friend and also provided for denial of request by State Hospital Superintendent.

§ 32-931. Notice of right to apply for discharge.

The superintendent of the hospital shall provide reasonable means and arrangements for informing involuntary patients of their right to discharge as provided in § 32-930 and for assisting them in making and presenting requests for discharge.

1952 (47) 2042.

§ 32-931.10. When patient statistically discharged.

Any patient absent from the hospital, either on conditional discharge or leave without permission, for one year or more, who has not received an absolute or

regular discharge, shall be considered as statistically discharged, and his name shall be removed from the current record of patients to the inactive list of patients, but this shall not restore to any such patient any legal rights lost by him or imply any judgment by the hospital or the Commission concerning the condition of the patient.

1954 (48) 1732.

§ 32-932. Re-examination of order of confinement for involuntary hospitalization.

Any patient confined pursuant to §§ 32-918 to 32-926 shall be entitled to a re-examination of the order for his confinement on his own petition or that of his legal guardian, parent, spouse, relative or friend to the probate court of the county from which he was admitted. Upon receipt of the petition, the court shall conduct proceedings in accordance with §§ 32-918 to 32-926, except that the proceedings shall not be required to be conducted if the petition is filed sooner than six months after the issuance of the order of confinement or sooner than one year after the filing of a previous petition under this section. The costs shall be borne by the petitioner and no rehearing shall be had in any case in which the costs have not been paid for a previous rehearing.

1952 (47) 2042.

ARTICLE 5.

Admission to and Discharge from State Training Schools.

§ 32-933. Voluntary admission of mentally defective to a training school.

The superintendent of a private training school may and, subject to the availability of suitable accommodations and if in the judgment of the superintendent the person is a proper subject for voluntary admission, the superintendent of a State training school shall admit for observation, diagnosis, training, care and treatment any individual who is mentally defective, if his parents, parent with custody, county governing body, lawful custodian or legal guardian applies therefor on his behalf.

An individual under sixteen years of age may, upon approval of the Commission, be admitted for the purpose of examination, adjustment, treatment or training to a State training school, if his parents, parent with custody, county governing body, lawful custodian or legal guardian applies therefor on his behalf.

The Commission shall determine which of the applications for admission shall be granted and in what order.

1952 (47) 2042.

§ 32-934. Commitment to State training school.

Proceedings for the involuntary admission of any individual to a State training school may be commenced by the filing of a written application with the probate court or any other court having jurisdiction by any friend, relative or guardian of the individual or the superintendent of any public or private institution in which such individual may be. The application shall be accompanied by a certificate of a licensed physician stating that he has examined the individual and is of the opinion that he is mentally defective or is otherwise a proper person to be admitted to a State training school and should be admitted or a written statement that the individual has refused to submit to an examination by a licensed physician.

1952 (47) 2042.

Cross reference.—Agency to initiate County, § 15-1277; Sumter County, § 15-1650.
action for treatment or commitment of
mentally disordered, etc. child in Greenville

§ 32-935. Same; notice of application.

Upon receipt of such an application the court shall give notice thereof to the person for whom the application is made, to his legal guardian, if any, and to

his parents and nearest known other relative or friend. If, however, the court has reason to believe that notice would be likely to be injurious to the individual, notice to him may be omitted.

1952 (47) 2042.

§ 32-936. Examination of individual.

As soon as practicable after notice of the commencement of the proceedings is given or it is determined that notice should be omitted, the court shall appoint two designated examiners to examine the individual and report to the court their findings as to his mental condition and his need for custody, care, training or treatment in a training school.

1952 (47) 2042.

§ 32-937. Effect of examiners' report.

If the report of the examiners is to the effect that they are of the opinion the individual is mentally defective or is otherwise a proper person to be admitted to a State training school the court shall forthwith fix a date for and give notice of a hearing, if a hearing is requested, to be held without a jury not more than fifteen days from receipt of the report. If the report of the examiners is to the effect that they are of the opinion that the individual is not mentally deficient or is not otherwise a proper person to be admitted to a State training school the court shall terminate the proceedings and dismiss the application.

1952 (47) 2042; 1954 (48) 1732.

Effect of amendment.—The amendment eliminated minimum time limitation on a hearing.

§ 32-938. Hearing on report.

If a hearing is requested, all persons to whom notice is required to be given may appear at the hearing, testify and present and cross-examine witnesses and the court may receive the testimony of any other person. The individual for whom the application is made shall not be required to be present and the court may exclude all persons not necessary for the conduct of the proceedings. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the individual. The court shall receive all relevant and material evidence which may be offered, including evidence of the want of proper supervision, control, care or support and of any other condition making it unsafe or dangerous to the welfare of the community or the welfare of the individual for whom the application is made for such individual to be at large without supervision, control and care.

1952 (47) 2042.

§ 32-939. Order of court.

If, upon completion of the hearing and consideration of the record, or, if no hearing be requested, upon the filing of the report of the examiners, the court finds that the individual for whom the application is made is mentally defective or is otherwise a proper person to be admitted to a State training school and

(1) Is in need of custody, care, training or treatment in a training school and because of this condition lacks sufficient insight or capacity to make responsible decisions with respect to his admittance to a training school or

(2) Because of his condition is likely to injure himself or others or is dangerous to the welfare of the community.

It shall order his admittance to a State training school; otherwise, it shall dismiss the proceeding.

1952 (47) 2042

§ 32-940. Commission's action prerequisite to order.

No order entered pursuant to § 32-939 shall be issued admitting any individual to a State training school or be binding upon the Commission, until the Commission, having been notified by the court of its finding, shall inform the court that suitable accommodations for the custody, care, training or treatment of the individual are available at a State training school.

1952 (47) 2042.

§ 32-941. Appeal to court of common pleas.

The petitioner or any other interested person standing within the family relationship of the person for whom the application is made may appeal from the order of the probate court or any other court subordinate to the court of common pleas to the court of common pleas of the county and a trial shall be had de novo with a jury in the same manner as civil actions are tried.

1952 (47) 2042.

§ 32-942. Discharge.

No individual admitted to the State training school under §§ 32-933 or 32-934 to 32-939 shall be discharged without the approval of the Commission or, by its designation, without approval of the superintendent, except upon an order of a judge of the Supreme Court or a circuit court of this State, having jurisdiction, rendered in a proceeding in the nature of an application for a writ of habeas corpus.

1952 (47) 2042.

Editor's note.—The State training school training school" may be to any such school; above has not been changed to Whitten see § 32-943.
Village; as the reference to "the State

§ 32-943. Leave of absence and revocation thereof.

The superintendent of any State training school, with the approval of the Commission, may permit any person to leave a State training school on leave of absence for such length of time and on such conditions as may be determined and may from time to time extend the period of such leave or change the conditions upon which it was granted. The Commission shall cause an investigation to be made prior to the granting of any such leave as to the home or place into which such person may go and of all other conditions and circumstances which may affect the welfare of the person to whom the leave may be granted. The Commission may revoke any leave of absence so granted and return any person to the institution at any time for any cause, in its judgment, deemed wise.

1952 (47) 2042.

§ 32-944. Order for reconfinement of person escaped or on revoked leave.

The Commission may issue an order for the immediate reconfinement of any person who may leave without permission or who may be on leave of absence, then revoked, from any State training school and this order, when endorsed by a judge of the probate court of the county in which the person is resident or present, shall authorize and require any police officer, preferably in civilian clothes, to take the person into custody and transport him to the training school designated.

1952 (47) 2042; 1954 (48) 1732.

Effect of amendment.—The amendment required police to return trainee.

§ 32-945. Penalty for harboring or interfering with return of such person.

Any person who shall harbor or otherwise interfere with the Commission in the return of any such person who may have left a training school without permission or who may fail to return or be returned after revocation of any leave of absence shall be guilty of a misdemeanor and shall be punished within the discretion of the court.

1952 (47) 2042.

ARTICLE 6.

*Federal Institutions.***§ 32-946. Placement in Federal institutions.**

If any individual ordered to be admitted to an institution pursuant to §§ 32-918 to 32-926 or 32-934 to 32-941 is eligible for institutional care or treatment by any agency of the United States, the court, upon receipt of a certificate from the agency showing that facilities are available and that the individual is eligible for care or treatment therein, may order him to be placed in the custody of the agency for admittance.

1952 (47) 2042.

§ 32-947. Authority and powers of such institutions in such cases.

When the individual is admitted pursuant to the order of the court to any institution operated by any agency of the United States within or without the State, he shall be subject to the rules and regulations of the agency. The superintendent of any institution operated by the agency and in which the individual is confined shall, with respect to the individual, be vested with the same powers as the superintendents of institutions or the Commission within this State with respect to detention, custody, transfer, conditional discharge or discharge of patients.

1952 (47) 2042.

§ 32-948. State courts retain right to determine necessity for continued confinement.

Jurisdiction is retained in the appropriate courts of this State to inquire, at any time into the mental condition of the individual admitted and to determine the necessity for continuance of his confinement. Every order of admittance issued pursuant to § 32-946 is so conditioned.

1952 (47) 2042.

§ 32-949. Jurisdiction of foreign courts over persons in Federal institutions.

An order of a court of competent jurisdiction of another state or of the District of Columbia, authorizing admittance of an individual by any agency of the United States, shall have the same force and effect as to the individual while in this State as in the jurisdiction in which is situated the court entering the order and such courts shall be deemed to have retained jurisdiction of the individual admitted for the purpose of inquiring into his mental condition and of determining the necessity for continuance of his confinement as is provided in § 32-948 with respect to individuals ordered admitted by the courts of this State. Consent is hereby given to the application of the law of the state or district in which is located the court issuing the order for admittance with respect to the authority of the superintendent of any hospital or institution operated in this State by any agency of the United States to retain custody, transfer, conditionally discharge or discharge the individual confined.

1952 (47) 2042.

§ 32-950. Transfer to Federal agency.

Upon receipt of a certificate of an agency of the United States that facilities are available for the care or treatment of any individual confined pursuant to law in any State mental health facility and that such individual is eligible for care or treatment in an institution of the agency, the Commission may cause his transfer to the agency of the United States for confinement. Upon effecting the transfer, the court ordering confinement, the legal guardian, spouse and parents or, if none be known, his nearest known relative or friend shall be notified thereof immediately by the Commission. No person shall be transferred to an agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of

mental illness unless prior to transfer the court originally ordering his confinement shall enter an order for transfer after appropriate motion and hearing. Any person transferred as provided in this section to an agency of the United States shall be deemed to be confined by the agency pursuant to the original order of confinement.

1952 (47) 2042.

ARTICLE 7.

Provisions Affecting All State Mental Health Facilities.

§ 32-950.1. Persons in other State institutions mentally ill or defective.

The superintendent of any State institution not under the jurisdiction of the Commission may request the admission of any person confined therein to a State mental health facility if the person is suspected of being mentally ill or mentally defective. If, after full examination, the superintendent of the facility is of the opinion that the person is mentally ill or mentally defective he shall hold him, subject to the orders of the Commission, and shall notify the superintendent of the institution from which the person was admitted. Upon recovery of the person the superintendent of the facility to which the person was admitted shall return him to the custody of the superintendent of the institution from which he was admitted.

1952 (47) 2042.

§ 32-950.2. Persons in jail mentally ill.

Upon receiving the notification provided for in § 55-410.1 concerning a person in jail and suspected of being mentally ill, mentally defective or epileptic, the Commission shall immediately cause the person to be examined by two designated examiners and if admittance is warranted it shall obtain his discharge from the arresting authority and shall, subject to the availability of suitable accommodations, admit the person to an appropriate State mental health facility.

1952 (47) 2042.

§ 32-950.2-1. Patients in nonresident institutions whose parent or guardian has moved to this State.

If the parent or guardian of any person who is a mentally ill or mentally deficient patient in an institution of a State other than this State, should move to this State, and such parent or guardian be a minister of any organized church, a missionary or a teacher and shall have been a resident of this State for a period of one year, then such patient may be transferred to the proper mental facility of this State.

1954 (48) 1748.

§ 32-950.2-2. Residents ordered to facility in another State.

Any individual, legally a resident of this State, ordered to be admitted to any mental health facility under the laws of any other State, may be admitted, upon satisfactory proof of residence, to care and treatment in any State mental health facility of this State. The orders of any court of competent jurisdiction of another State or of the District of Columbia, authorizing admittance of such individual to a mental health facility, shall have the same force and effect upon his transfer to this State as a lawful order of any court of competent jurisdiction in this State. A certified copy of such order shall be furnished the Commission prior to the issuance by the Commission of any authorization of transfer of such patient. Jurisdiction in all further matters relating to such mentally ill person shall vest in the judge of probate of the county in which the mental health facility, to which such person is admitted, is located, during his confinement therein, or the judge of probate of the county in which he is legally resident.

1954 (48) 1732.

§ 32-950.3. Forms to be kept in each county.

The judge of probate in each county shall keep an adequate supply of all forms necessary for the admission or commitment of all persons under this chapter.

1952 (47) 2042.

§ 32-950.4. Custody pending removal to State mental health facility.

Pending his removal to a State mental health facility the individual taken into custody or ordered to be admitted may be temporarily detained in his home, a licensed foster home or any other suitable facility under such reasonable conditions as the county governing body, supervisor or manager may fix, but he shall not except because of and during an extreme emergency, be detained in a non-medical establishment used for the detention of individuals charged with or convicted of penal offenses. The county governing body, supervisor or manager shall take such reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained under this section.

1952 (47) 2042.

§ 32-950.5. Transportation to State mental health facility.

Whenever an individual is about to be admitted to a State mental health facility under the provisions of §§ 32-912, 32-915, 32-918 to 32-923 or 32-934 to 32-939 the superintendent of the facility concerned upon request may approve transportation of the individual by any of the following persons:

(1) Relatives or friends of the individual, but the State shall not be charged with any expenses arising out of such transportation;

(2) County officials, preferably in civilian clothes, at the expense of the county; or

(3) Any State mental health facility's personnel upon condition that the county from which the person is transported agrees to pay the expenses incurred by the facility in transporting the individual.

1952 (47) 2042.

§ 32-950.6. Examinations.

Every patient or trainee admitted pursuant to the provisions of §§ 32-912, 32-915, 32-918 to 32-926 or 32-934 to 32-941 shall be examined by a member of the medical staff of the institution promptly after his admission and shall be examined by the full medical staff within thirty days after his admission.

1952 (47) 2042.

§ 32-950.7. Transfers by Commission.

The Commission may transfer or authorize the transfer of any patient or trainee from one facility to another if the Commission determines that it would be consistent with the medical needs of the person to do so. When a patient or trainee is transferred, written notice thereof shall be given to his legal guardian, parents, spouse or, if none such be known, to his nearest known relative or friend.

1952 (47) 2042, 1954 (48) 1732.

Effect of amendment.—Formerly only involuntary patients and trainees could be transferred.

§ 32-950.8. Transfer on request of guardian, etc.

If a legal guardian, parent, spouse, relative or friend of an involuntary patient or trainee desires the transfer of the patient from one facility to another he may submit a request therefor to the Commission stating his reasons for desiring the transfer and unless the Commission reasonably determines that it would be inconsistent with the medical needs of such person the transfer shall be made.

1952 (47) 2042.

§ 32-950.9. Periodic examination of patients and trainees; discharge.

The superintendent of a State mental health facility shall, as frequently as practicable but not less often than every twelve months, examine or cause to be examined every patient or trainee and whenever he determines that the conditions justifying involuntary confinement of any patient or trainee no longer obtain he shall immediately make a report thereof to the Commission and the Commission may discharge such person.

1952 (47) 2042.

§ 32-950.10. Conditional and final discharge of improved patient.

The superintendent of a State hospital with the approval of the Commission may conditionally discharge an improved patient on the condition that he receive out-patient treatment or on other reasonable conditions specified by the Commission. Whenever conditional discharge of a patient has extended beyond one year, the patient or his committee may request the superintendent of the institution to re-examine the facts relating to the patient's confinement and the patient shall present himself at the hospital for this re-examination, and if the superintendent determines that in view of the condition of the patient confinement is no longer justified, he shall make an immediate report thereof to the Commission and the Commission may discharge the patient.

1952 (47) 2042; 1954 (48) 1732.

Effect of amendment.—Amendment relieved superintendent of a State hospital of mandatory re-examination and required request therefor from the patient or his committee and for patient to submit to re-examination.

§ 32-950.11. Reconfinement of conditionally discharged or escaped patient.

The Commission may issue an order for the immediate reconfinement of a conditionally discharged patient who has failed to fulfill the conditions of his discharge or any patient who has left a State hospital without permission if it has reason to believe that conditions justifying confinement continue to exist. This order, when endorsed by a judge of the probate court of the county in which the patient is a resident or is present, shall authorize and require any police officer, preferably in civilian clothes, to take the patient into custody and transport him to the facility designated by the Commission.

1952 (47) 2042; 1954 (48) 1732.

Effect of amendment.—1954 amendment directed police to transport patient to designated facility.

§ 32-950.12. Communication privileges of patients and trainees.

Subject to the general rules and regulations of the Commission and except to the extent that the superintendent of the institution determines that it is necessary for the welfare of the person to impose restrictions, every patient or trainee may:

(1) Communicate by sealed mail or otherwise with persons, including official agencies, inside or outside the institution; and

(2) Receive visitors.

Notwithstanding any limitations authorized under this section on the right of communication, every patient or trainee may communicate by sealed mail with the Commission and with the court, if any, which ordered his confinement.

Any limitations imposed by the superintendent of the institution on the exercise of these rights by a patient or trainee and the reasons for the limitations shall be made a part of the clinical record of the person.

1952 (47) 2042.

§ 32-950.13. Habeas corpus.

Any individual detained pursuant to this chapter shall be entitled to the writ of habeas corpus upon proper petition by himself or a friend to any court gen-

erally empowered to issue the writ of habeas corpus in the county in which he is detained.

1952 (47) 2042.

§ 32-950.14. Disclosure of records.

All certificates, applications, records and reports made for the purpose of this chapter and directly or indirectly identifying a patient or trainee or former patient or trainee or an individual whose confinement has been sought under this chapter shall be kept confidential and shall not be disclosed by any person except insofar as:

(1) The individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent;

(2) Disclosure may be necessary to carry out any of the provisions of this chapter;

(3) A court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make disclosure would be contrary to the public interest.

(4) Disclosure may be necessary in cooperating with State agencies in furthering the welfare of the patient or his family.

1952 (47) 2042; 1954 (48) 1732.

Effect of amendment.—A m e n d m e n t the section. Last two paragraphs remain added above item (4) to first paragraph of unchanged and effective.

§ 32-950.15. Removal of nonresident patient or trainee.

If any person admitted to a State mental health facility is not a citizen of this State, the superintendent of the facility concerned shall immediately notify the Commission and the Commission shall notify the mental health commission or other appropriate agency of the State of which the patient or trainee is a citizen. If the State of his citizenship fails to provide for his removal within a reasonable time, the Commission shall cause him to be delivered to the officials authorized by law to care for similar persons pending their commitment to State institutions of the State of his citizenship. The cost of these proceedings and conveyance from this State shall be borne by this State under reciprocity agreements made by the Commission with the mental health authorities of other States. In entering upon such reciprocal agreements with other States, the Commission shall provide that the requirements necessary to gain residence in this State shall not be less than those required for the acquisition of residence in the other contracting State. The Commission may, however, in cases of undue hardship, waive the requirements of residence, for cause.

1952 (47) 2042; 1954 (48) 1732.

Effect of amendment.—Prior to amend- was notified. The amendment also added ment the Governor of nonresident's State last two sentences.

§ 32-950.16. Patient or trainee not a citizen of United States.

If any person admitted to a State mental health facility is not a citizen of the United States, the superintendent of the facility concerned shall immediately notify the Commission of the name of the person and all ascertainable information as to his race, nativity, date of last arrival in the United States, the name of the vessel on which he arrived, the port at which he landed and the name of the transporting company. The Commission shall transmit this information to the appropriate United States authorities and shall continue to provide care and treatment for the patient or trainee pending arrangements for his deportation.

1952 (47) 2042.

§§ 32-950.17 to 32-950.21. Committee for patient or trainee; appeal from such order.

Repealed by A. & J. R. 1954 (48) 1732.

Cross reference.—See now §§ 32-990 to 32-990.5.

§ 32-950.22. Charges for mental health facilities.

The Commission shall establish the charges for maintenance and medical care for patients, other than beneficiary, of State mental health facilities, which shall be based upon the per capita costs per day of the services rendered, which may include costs of operation, depreciation and all other elements of cost and may be adjusted from time to time as the Commission considers advisable. It shall establish a reasonable scale of fees to be charged patients, other than beneficiary, served by the mental health clinics and shall retain these fees for use in defraying the expenses of the clinics.

1952 (47) 2042.

§ 32-950.23. Liability of estate of deceased patient or trainee for State care.

Upon the death of a person who is or has been a patient or trainee of a State mental health facility the executor or administrator and the judge of probate shall notify the Commission in writing. If the decedent was cared for at the expense of the State during his confinement, the Commission shall present a claim for the amount due and this claim shall be allowed and paid as other lawful claims against the estate. The Commission may waive the presentation of any claim when, in its opinion, an otherwise dependent person would be directly benefited by such waiver.

1952 (47) 2042.

Patient or estate to pay for care if able.

—There is a continuity of thought running throughout this legislation, beginning with the Act of 1915, that the indigent mentally ill are to receive State care upon condition that they or their estates pay for it when and if able, and the fact that upon enactment of this section there was simultaneous repeal of substantially same statutory provision did not have the effect of putting an end to all proceedings under the prior legislation as to such rights as had vested under the repealed act, and the enactment of this section on March 7, 1952, did not have the effect of rendering invalid all

claims or charges which accrued prior thereto. South Carolina Mental Health Comm. v. May, Westbrook Advance Sheets, No. 16915, filed Sept. 30, 1954.

And for entire period of care.—The language of this section requiring a claim to be filed upon the death of a person who is or has been a patient for the amount due, was intended by the legislature to cover the period during which such care and treatment was received, and six year statute of limitation, § 10-143, is not applicable to such claim. South Carolina Mental Health Comm. v. May, Westbrook Advance Sheets, No. 16915, filed Sept. 30, 1954.

§ 32-950.24. Commission may contract for care and treatment.

The Commission shall make investigations and ascertain which of the patients or trainees of State mental health facilities or which of the parents, guardians, trustees, committees or other persons legally responsible therefor are financially able to pay the expenses of care and treatment and it may contract with any of these persons for the patient's or trainee's care and treatment. The Commission may require any county or State agency which might have or might be able to obtain information which would be helpful to it in making this investigation to furnish this information upon request. In arriving at the amount to be paid the Commission shall have due regard for the financial condition and estate of the patient or trainee, his present and future needs and the present and future needs of his lawful dependents and, whenever considered necessary to protect him or his dependents, may agree to accept a monthly sum less than the actual per capita cost.

1952 (47) 2042.

§ 32-950.25. Lien for care and treatment.

There is hereby created a general lien upon the real and personal property of any person who is receiving or who has received care or treatment in a State mental health facility, to the extent of the total expense to the State in providing such care, training or treatment. The Commission shall send to the clerk of court and to the judge of probate of the county of the patient's or trainee's known or last known residence a statement showing the name of the patient or

trainee and the date upon which the lien attaches, which shall be filed in the offices of the clerk of court and the judge of probate in each county in which the patient or trainee then owns or thereafter acquires property, real or personal. No charge shall be made for such filing. From the time of filing in either office the statement shall constitute due notice of the lien against all property then owned or thereafter acquired by the patient or trainee. No action to enforce the lien may be brought more than one year after the patient's or trainee's death. This lien shall in no way affect the right of homestead.

1952 (47) 2042; 1953 (48) 504; 1954 (48) 1732.

Effect of amendment.—The 1953 and 1954 amendments deleted "after March 7, 1952," which formerly appeared at the end of the first sentence.

Quoted in South Carolina Mental Health Comm. v. May, Westbrook Advance Sheets, No. 16915, filed Sept. 30, 1954.

§ 32-950.26. Sexual intercourse with patient or trainee.

Any person having sexual intercourse with a patient or trainee of any State mental health facility, whether the patient or trainee is within the facility or unlawfully away from the facility, shall be guilty of a felony and, upon conviction, shall be punished by hard labor on the county chain gang or in the State penitentiary for a period not exceeding twenty years, within the discretion of the court.

1952 (47) 2042.

§ 32-950.27. Infirm or otherwise harmless mental defective or epileptic.

The Commission shall investigate the case of each patient or trainee in a State mental health facility who is simply mentally or physically infirm or who is a harmless mental defective or harmless epileptic. When, in the opinion of the Commission, the family, guardian, trustee, committee or other person legally responsible for the person is financially able to provide for his care, it shall, when in the opinion of the Commission this is advisable, transfer the patient or trainee to the custody of that person. If all persons legally responsible for the patient or trainee are financially unable to provide for his care, the Commission shall, when practicable, transfer the custody of the person to the county health authorities of the county of which the patient or trainee was a resident prior to admittance.

1952 (47) 2042.

§ 32-950.28. Discharges; effect of; court reports.

No person except a voluntary patient or trainee shall be conditionally discharged or discharged except upon approval by the Commission and the fulfillment of conditions specified by it. The regular discharge of any person shall ipso facto restore to him all his legal rights. The superintendent of the facility from which a person, admitted under judicial procedure, is discharged shall cause to be filed with the court from which the person was admitted a certificate, the form of which the Commission shall prescribe, showing that the person concerned has been found mentally competent and has been regularly discharged.

1952 (47) 2042.

§ 32-950.29. Discharge or leave of absence of person confined by judicial proceedings.

Notwithstanding any other provision of this chapter, no person with respect to whom proceedings for judicial confinement have been commenced shall be granted leave of absence, conditionally discharged or discharged during the pendency of such proceedings unless ordered by the court upon the application of the patient or trainee, his legal guardian, parent, spouse or next of kin or upon the report of the superintendent of the facility that the person may be discharged with safety.

1952 (47) 2042.

§ 32-950.30. Unwarranted confinement or denial of right hereunder.

Any person who wilfully causes or conspires with or assists another to cause (a) the unwarranted confinement of any individual under the provisions of this chapter or (b) the denial to any individual of any of the rights accorded to him under the provisions of this chapter shall be fined not exceeding one thousand dollars or imprisoned for not exceeding one year, or both.

1952 (47) 2042.

§§ 32-951 to 32-988. South Carolina State Hospital.

Repealed by A. & J. R. 1952 (47) 2042. A. & J. R. 1954 (48) 1732 repealed § 32-973.

Cross reference.—See now §§ 32-891 to 32-950.30.

ARTICLE 8.*Committee.***§ 32-990. Petition for appointment; party defendants; service of papers; guardian ad litem for the defendant.**

When any relative, friend or other interested person is desirous of having a committee appointed for any individual believed by him to be mentally ill or mentally deficient and incapable of caring for or managing his own estate, whether such person be a patient or trainee in a mental health facility or not, he shall file with the probate court of the county in which the individual resides or resided prior to his admission to a mental health facility, a written verified petition stating his reasons for desiring the appointment of a committee. Copies of the petition together with copies of a summons and a notice to procure a guardian ad litem shall be served upon the person for whom a committee is sought, upon his legal guardian, if any, and his nearest known relative or friend, all of whom shall be designated in the papers as defendants. A copy of such papers shall be sent to the facility concerned for inclusion in its records. The court may, in its judgment, appoint a guardian ad litem for any such person if no appearance or answer be made by him or by anyone on his behalf within twenty days.

1954 (48) 1732.

§ 32-990.1. Certificates required when person a patient or trainee.

If the person be a patient or trainee in a mental health facility then the petition must be accompanied by a certificate signed by the physician in charge and the superintendent of the facility concerned to the effect that the individual is, in their opinion, after a full examination, mentally ill or mentally deficient and incapable of caring for or managing his own estate, together with a certificate from the Commission stating that the person has been admitted to a mental health facility and is a patient or trainee subject to the control of the Commission.

1954 (48) 1732.

§ 32-990.2. Examination and hearing when person not a patient or trainee.

When the person is not a patient or a trainee in a mental health facility; the petition shall be filed with the court as above stated and copies of the summons, petition and notice served as above required. The court shall then take such proceedings for the appointment of two designated examiners' to examine the person and report to the court their findings as to his mental condition and in particular his capacity to care for and manage his own affairs. And such examination will be conducted and examiners' report made and received and a hearing held in accordance with paragraphs (c), (d), (e) and (f). If the examiners fail to agree, the court shall terminate the proceedings and dismiss the petition.

1954 (48) 1732.

§ 32-990.3. Hearing when such certificates attached petition.

If the person for whom the appointment of a committee is sought be a patient or trainee in a mental health facility and the certificates required by § 32-990.2 are attached to the petition, the court shall, as soon as possible after the pleadings are all in, hold a hearing at which all persons interested may appear and submit any relevant or material evidence. The person for whom a committee is sought need not be present.

1954 (48) 1732.

§ 32-990.4. Appointment of committee.

If, upon the completion of the hearing and consideration of the record, the court finds that the individual, being mentally ill or mentally deficient, is incapable of caring for and managing his own estate, a committee may be appointed and the court shall make any further orders necessary for the custody and control of the individual's estate.

1954 (48) 1732.

§ 32-990.5. Appeal from such order.

An appeal may be taken from such order of the probate court to the court of common pleas of the county where the application is made and there a trial shall be had de novo before a jury as civil actions are tried.

1954 (48) 1732.

§ 32-990.50. When superintendent of State Hospital may act for patient therein.

If any mentally ill person, a patient of the State Hospital, has no legally appointed committee, the superintendent of the hospital may receive and accept for the use and benefit of any such patient any sum of money, not in excess of the sum of seven hundred dollars in any one calendar year, which may be due such patient by inheritance, gift, pension or otherwise. The superintendent may act as committee for any such patient and his endorsement or receipt shall discharge the obligor for such sum so received. Upon receipt of any such fund the superintendent shall use it for the proper maintenance, use and benefit of such patient, or as much thereof as may be necessary for such purposes. In the event any such patient should die leaving an unexpended balance of any such funds in the hands of the superintendent, he shall apply such balance first to the funeral expenses of such patient and then to the payment and discharge of any indebtedness due the hospital by such deceased patient and any balance remaining thereafter shall be paid to the judge of probate of the county from which the patient was admitted to be distributed under the statute of distribution of the State.

1954 (48) 1732.

ARTICLE 9.*Reexamination of Sanity.***§ 32-992. Petition.**

Any person, not actually confined in a State mental health facility or on conditional discharge therefrom during the period prescribed in such conditional discharge, having been previously adjudged mentally incompetent in the probate court of any county in this State may have his mental capacity readjudged in the following manner. A petition may be brought in the probate court of the county wherein such person resides by a guardian ad litem for such person, or by his committee if he has one, praying that such person be adjudged a person of sound mind and memory and capable of managing, conducting and controlling his own affairs and that he be discharged and relieved of the judgment of mental incompetency previously rendered.

1954 (48) 1732.

§ 32-992.1. Hearing; investigation.

Upon such petition being brought as provided by § 32-992, the probate judge of the county wherein it is brought shall have a hearing wherein witnesses shall be examined, including two licensed physicians who shall be registered by the Commission as designated examiners, and shall make such further investigation as he deems necessary for a proper examination in the matter. The probate judge shall then make his determination in regard to the matter prayed for in the petition.

1954 (48) 1732.

§ 32-992.2. Effect of determination of sanity.

Upon the prayer of the petition being granted by reason of such determination of the probate judge, the petitioner shall thereby be restored to his legal status as to property and contractual rights as if he had never been adjudged mentally incompetent.

1954 (48) 1732.

§ 32-992.3. Appeal.

The petitioner or any other interested person standing within the family relationship of the mentally ill person may appeal from the order of the probate court to the court of common pleas of the county wherein the petition is brought and there a trial shall be had de novo with a jury in like manner as civil actions are tried.

1954 (48) 1732.

CHAPTER 6.

OTHER PROVISIONS REGARDING MENTALLY ILL OR DEFICIENT.

Sec.

32-1001 to 32-1004. [Repealed.]

32-1005 to 32-1007 [Repealed.]

Sec.

32-1008, 32-1009. [Repealed.]

§§ 32-1001 to 32-1004. Appointment of committee.

Repealed by A. & J. R. 1952 (47) 2042.

Cross reference.—See now §§ 32-891 to 32-950.30.

§§ 32-1005 to 32-1007. Reexamination of sanity; appeal.

Repealed by A. & J. R. 1954 (48) 1732.

See now §§ 32-992 to 32-992.3.

§§ 32-1008, 32-1009. Residents of other states and foreign countries.

Repealed by A. & J. R. 1952 (47) 2042.

Cross reference.—See now §§ 32-891 to 32-950.30.

CHAPTER 7.

STATE TRAINING SCHOOL.

Sec.

32-1051 to 32-1075. [Repealed.]

§§ 32-1051 to 32-1075. State Training School.

Repealed by A. & J. R. 1952 (47) 2042.

Cross reference.—See now §§ 32-891 to 32-992.3, particularly § 32-899.

Editor's Note.—A. & J. R. 1954 p. 1747

changed name of State Training School to Whitten Village. See §§ 32-899.

CHAPTER 8.

VITAL STATISTICS.

Article 2.

Birth Cards and Other Certificates.

Sec.

32-1124. Fees for such certificates, etc.

Article 4.

Special Provisions in Certain Counties.

32-1161.1. Barnwell County registrar may issue certified copies.

32-1162.1. Georgetown County vital statistics filed with county health department.

32-1163.1. Marion County clerk may issue copies.

32-1163.2. Newberry County vital statistics to be filed with county health department.

Article 4.1.

Bamberg County Bureau of Vital Statistics.

Sec.

32-1166. Established, duties, etc.

Article 4.2.

Dillon County Bureau of Vital Statistics.

32-1168. Established, duties, etc.

Article 4.3.

Laurens County Bureau of Vital Statistics.

32-1170. Established, duties, etc.

Article 4.4.

Abbeville County Bureau of Vital Statistics.

32-1170.11. Established, duties, etc.

ARTICLE 2.

*Birth Cards and Other Certificates.***§ 32-1124. Fees for such certificates, etc.**

For the making, furnishing of and certification upon any such card or certificate or certified copy of the record mentioned in §§ 32-1121 or 32-1122 a fee of fifty cents shall be charged and paid by the applicant. But when any birth or death record is required by the United States Government in connection with the administration of the Servicemen's Dependent Allowance Act of June 23, 1942 or the Selective Service Act of 1948, as amended, or when such records are required in connection with the administration of all Acts of Congress administered by the Veterans Administration or are required by a man or woman entering the military service of the United States a local official furnishing such record, upon request accompanied by satisfactory evidence that such records are for the purpose herein authorized, shall furnish certified such card, certificate or copies to applicants therefor without cost.

1945 (44) 80; 1951 (47) 437; 1952 (47) 2146.

Effect of amendment.—The amendment added the Selective Service Act of 1948, as amended, and included all matters connected with the administration of Acts of

Congress administered by the Veterans Administration where formerly the section was limited to claims for benefits under such acts.

ARTICLE 4.

*Special Provisions in Certain Counties.***§ 32-1161.1. Barnwell County registrar may issue certified copies.**

Provisions of A. & J. R. 1953 (48) 184 make up this section.

§ 32-1162.1. Georgetown County vital statistics filed with county health department.

Provisions of A. & J. R. 1953 (48) 346 make up this section.

§ 32-1163.1. Marion County clerk may issue copies.

Provisions of A. & J. R. 1953 (48) 404 make up this section.

§ 32-1163.2. Newberry County vital statistics to be filed with county health department.

Provisions of A. & J. R. 1953 (48) 70 make up this section.

ARTICLE 4.1.

Bamberg County Bureau of Vital Statistics.§ 32-1166. **Established, duties, etc.**

Provisions of A. & J. R. 1953 (48) 236 make up this section.

ARTICLE 4.2.

Dillon County Bureau of Vital Statistics.§ 32-1168. **Established, duties, etc.**

Provisions of A. & J. R. 1953 (48) 399 make up this section.

ARTICLE 4.3.

Laurens County Bureau of Vital Statistics.§ 32-1170. **Established, duties, etc.**

Provisions of A. & J. R. 1953 (48) 227 make up this section.

ARTICLE 4.4.

Abbeville County Bureau of Vital Statistics.§ 32-1170.11. **Established, duties, etc.**

Provisions of A. & J. R. 1954 (48) 1486 make up this section.

CHAPTER 9.

WATER, SEWERAGE, GARBAGE, ETC.*

Article 5.11.

Collection of Garbage.

Sec.

32-1275. Definitions.

32-1275.1. Permit required to collect garbage.

Sec.

32-1275.2. Revocation or refusal of permit.

32-1275.3. Notifications required when garbage disposed of; exceptions.

32-1275.4. Administration and enforcement.

32-1275.5. Penalties; injunctions.

ARTICLE 5.11.

Collection of Garbage.§ 32-1275. **Definitions.**

(1) "Garbage" regardless of previous processing means animal or vegetable wastes resulting from handling, preparation, cooking and consumption of foods, including parts of animal carcasses, offal or contents of the offal.

(2) "Person" means State, any municipality, political subdivision, institution, public or private corporation, individual, partnership or any other entity.

1954 (48) 1710.

§ 32-1275.1. **Permit required to collect garbage.**

No person shall collect garbage from more than two families or places without first securing a permit therefor from the livestock sanitary department of The Clemson Agricultural College of South Carolina or the county agricultural agent.

1954 (48) 1710.

§ 32-1275.2. **Revocation or refusal of permit.**

Upon determination that any person having a permit issued under § 32-1275.1, or who has applied for a permit hereunder, has violated or failed to comply with any of the provisions of this article or any of the rules and regulations promulgated hereunder, the department may revoke such permit or refuse to issue a permit to an applicant therefor.

1954 (48) 1710.

*For garbage disposal in Spartanburg County, see § 32-410.

§ 32-1275.3. Notifications required when garbage disposed of; exceptions.

Any person who shall sell, give away or otherwise dispose of garbage to any person shall notify the department or the county agricultural agent, giving the name and address of the party who obtain the garbage. This shall not apply to those persons whose garbage is collected by municipalities, persons who have a permit to collect garbage or persons who may sell, give away or otherwise dispose of his own ordinary household garbage.

1954 (48) 1710.

§ 32-1275.4. Administration and enforcement.

The department shall administer and enforce the provisions of this article and may make and enforce all rules and regulations which the department may deem necessary to carry out the purposes of the article.

1954 (48) 1710.

§ 32-1275.5. Penalties; injunctions.

Any person who shall violate any of the provisions of, or who fails to perform any duty imposed by, this article, or who violates any rule or regulation promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars nor less than twenty-five dollars or imprisoned not to exceed thirty days. In addition thereto, such person may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

1954 (48) 1710.

CHAPTER 11.**FOOD AND DRUGS.****ARTICLE 1.***General Provisions.***§ 32-1451. General powers of State Board of Health.**

Cited in *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

§ 32-1452. "Food" and "drug" defined.

Quoted in *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

§ 32-1511. Definitions of "drug", "food" and "blend."

Quoted in *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

§ 32-1514. When food deemed adulterated.

Quoted in *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

§ 32-1515. When nonalcoholic drink deemed adulterated.

Quoted in *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

§ 32-1520. Manufacture or sale when adulterated or misbranded.

A violation of this article is negligence per se. There is good reason for the rule which allows the plaintiff to make out a prima facie case by showing a violation of the statute. Thereafter, a defendant may adduce evidence to show that there has

been, in fact, no negligence, it being in the last analysis a question for the jury unless, of course, the evidence is susceptible of only one reasonable inference. *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

Proper parties defendant.—Where an action involves both the manufacturer and the retailer under the Pure Food and Drug Laws, it is not only proper but preferable to join both defendants in the same complaint in order to prevent a multiplicity of actions. *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

Not essential to plead this article if allegations bring case within it. The complaint does not denominate this suit as being one brought under the Pure Food

and Drug Act, §§ 32-1451 et seq., but a reading of the complaint indicates that the action is brought under the terms of this act as well as under the common law. It is not essential to plead the statute as such, but the Court is required to take notice of the statutes whether specifically mentioned or not if the allegations of fact bring the case within the provisions thereof. *Peters v. Double Cola Bottling Co. of Columbia*, 224 S. C. 437, 79 S. E. (2d) 710 (1954).

ARTICLE 4.

Adulterated or Misbranded Foods and Drugs.

§ 32-1525. Rules and regulations.

Cross reference.—For rules and regulations promulgated under authority of this

section, see Rules and Regulations, Agriculture Commissioner, in Volume 7.

CHAPTER 12.

MILK AND MILK PRODUCTS AND IMITATIONS THEREOF; OLEOMARGARINE.

Article 1.1.

Butterfat Contents and Weight of Milk.

Sec.

32-1609.11. Penalties.

Article 2.

Milk and Cream Imported from Other States.

32-1610. Definitions.

32-1610.1. State Dairy Commission; number and qualifications of members.

32-1610.2. Appointment of Commission members.

32-1610.3. Qualifications of members.

32-1610.4. Terms of members; vacancies.

32-1610.5. Chairman, director and other employees.

32-1610.6. Per diem and expenses.

32-1610.7. Offices.

32-1610.8. Quorum.

32-1610.9. Permit required to import milk generally.

32-1610.10. Same; condition of such permits.

32-1610.11. Suspension, revocation or lapse of such permits.

32-1610.12. Permit required for importation of milk for fluid distribution.

32-1610.13. Certificates to be filed with application.

32-1610.14. Permit to be for lowest grade of milk handled by applicant.

32-1610.15. Rules and regulations as to standards, etc.

Sec.

32-1610.16. Information from other authorities.

32-1610.17. Notice of shipments.

32-1610.18. Suspension, revocation and termination by lapse of time of permits.

32-1610.19. Temporary or emergency permits.

32-1610.20. Stop-sale orders.

32-1610.21. Commission to have access to dairies, etc.

32-1610.22. Reports of importers, etc.

32-1610.23. Check of records by Commission; failure to provide.

32-1610.24. Commission may make regulations.

32-1610.25. Municipality may provide higher standards.

32-1610.26. No power to classify locally produced milk or control price.

32-1610.27. Application of article.

32-1610.28. Penalties.

32-1611 to 32-1631. [Repealed.]

Article 6.

Ice Cream, Ices, etc.

32-1701. Definitions.

32-1703. Pasteurization required.

32-1704. False labeling; misrepresentation, etc.

32-1709. Exemptions from article.

32-1710. Enforcement; rules and regulations.

ARTICLE 1.1.

Butterfat Contents and Weight of Milk.

§ 32-1609.7. Rules and regulations.

Cross reference.—For rules and regulations promulgated under authority of this

section, see Rules and Regulations, Agriculture Commissioner, in Volume 7.

§ 32-1609.11. Penalties.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction, for the first offense shall be fined not less than twenty-five dollars nor more than one hundred dollars or be imprisoned not less than ten days nor more than thirty days, in the discretion of the court, and for the second or any subsequent offense shall be fined not less than one hundred dollars nor more than two thousand dollars or be imprisoned for not less than thirty days nor more than two years, or be both fined and imprisoned, in the discretion of the court.

1951 (47) 541; 1953 (48) 42.

Effect of amendment.—Formerly the \$1,000.00 and the maximum prison sentence fine for a first offense was from \$10.00 to was one year.

ARTICLE 2.*Milk and Cream Imported from Other States.***§ 32-1610. Definitions.**

As used in this article, unless otherwise stated or unless the context of the subject matter clearly indicates otherwise:

“*Commission*” means the State Dairy Commission created in this article;

“*Producer*” means any person producing Grade “A” milk under a permit issued in this State;

“*Milk distributor*” means any person who owns or operates a milk processing and distributing plant in this State;

“*Director*” means the director of the Commission;

“*Zone I*” means the counties of *Abbeville, Anderson, Cherokee, Greenville, Greenwood, Laurens, McCormick, Newberry, Oconee, Pickens, Spartanburg* and *Union*;

“*Zone II*” means the counties of *Aiken, Chester, Edgefield, Fairfield, Kershaw, Lancaster, Lee, Lexington, Richland, Saluda, Sumter* and *York*; and

“*Zone III*” means the counties of *Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Marion, Marlboro, Orangeburg* and *Williamsburg*.

1953 (48) 279.

§ 32-1610.1. State Dairy Commission; number and qualifications of members.

There is hereby created a State Dairy Commission consisting of nine members, three of whom shall be producers of milk who are not directly or indirectly engaged in the distribution thereof, three of whom shall be engaged in the business of processing and distribution of milk and the other three of whom shall be the Commissioner of Agriculture and two consumers appointed by the Governor.

1953 (48) 279.

§ 32-1610.2. Appointment of Commission members.

To establish this Commission, the Commissioner of Agriculture called public meetings of the producers and of the distributors in each zone, at which time each group in each zone nominated two producers and two distributors for members of the Commission. These nominations were given to the Governor by the Commissioner of Agriculture and the Governor appointed one producer and one distributor for each zone, from the nominations made in that zone, and they became legal members of the Commission upon appointment by the Governor. Hereafter such meetings shall be called by the Commission.

1953 (48) 279.

§ 32-1610.3. Qualifications of members.

No business firm shall be entitled to have more than one member serving on the Commission at any given time and not more than one producer selling milk

to the same company shall be eligible to serve on the Commission. One producer member shall be from Zone I, one from Zone II and one from Zone III. One milk distributor member shall own or operate a milk processing and distributing plant in Zone I, one shall own or operate a milk processing and distributing plant in Zone II and one shall own or operate a milk processing and distributing plant in Zone III. No appointive member of the Commission shall be eligible for re-appointment until after the lapse of one year from the expiration of his term of service.

1953 (48) 279.

§ 32-1610.4. Terms of members; vacancies.

For the purpose of setting up the Commission, the initial members cast lots to determine which members in each group should serve for one year, which members should serve for two years and which members should serve for three years. Hereafter the term of office of the appointive members shall be for three years. Any vacancy on the Commission shall be filled for the unexpired term by the remaining members of the Commission from the zone in which the vacancy occurred.

1953 (48) 279.

§ 32-1610.5. Chairman, director and other employees.

The members of the Commission shall select one of their number as chairman. The Commission may appoint, prescribe the duties and, at pleasure, remove the director of the Commission. The members of the Commission shall fix the compensation of the director. The director may hire, fix the compensation, prescribe the duties and discharge employees, subject to the approval of the Commission. No member or close relative of a member shall be employed by the Commission.

1953 (48) 279.

§ 32-1610.6. Per diem and expenses.

The members of the Commission shall be paid the regular per diem in the performance of their official duties, plus the actual expenses of travel required by the Commission.

1953 (48) 279.

§ 32-1610.7. Offices.

The principal offices of the Commission shall be in the city of *Columbia* in space provided by the State.

1953 (48) 279.

§ 32-1610.8. Quorum.

A majority of the members of the Commission shall constitute a quorum.

1953 (48) 279.

§ 32-1610.9. Permit required to import milk generally.

No person shall import, transport into, receive, bring into or cause to be imported or to be sent into this State from another state for the purpose of sale, or offering for sale, for the purpose of distribution, any bulk or bottled or packaged milk or cream unless such person has obtained a permit from the Commission for such purpose. Such permits shall be issued for a period of one month, with proper authority to renew the permit from month to month.

1953 (48) 279.

§ 32-1610.10. Same; condition of such permits.

The permits issued hereunder shall be conditioned upon compliance by the applicant or holder with the rules and regulations and laws of this State govern-

ing milk or cream and such other conditions or requirements as may be established and promulgated by the Commission.

1953 (48) 279.

§ 32-1610.11. Suspension, revocation or lapse of such permits.

The Commission may suspend, upon twenty-four hours' notice to the shipper and receiver, any permit issued under authority of § 32-1610.9 if it is found by the Commission that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit and the Commission shall, immediately after prompt hearing, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended. The permits issued under § 32-1610.9 may be revoked after due notice and an opportunity for hearing by the Commission upon a finding at such hearing of any violation of any of the conditions, terms or requirements established and promulgated by the Commission or any of the laws of the State governing milk and cream. All permits issued under the authority of § 32-1610.9 shall become null and void after the thirty-first of December of each year.

1953 (48) 279.

§ 32-1610.12. Permit required for importation of milk for fluid distribution.

No person shall ship, transport, carry, send or bring into this State any bulk, bottled or packaged milk or cream for fluid distribution without first having applied for and obtained from the Commission a permit therefor. The Commission may issue such a permit for a period of one month, with authority to renew the permit from month to month.

1953 (48) 279.

§ 32-1610.13. Certificates to be filed with application.

Before issuing a permit as herein provided, the Commission shall require the applicant to secure and file with the Commission a certificate from the State agency charged with the duty of inspecting and grading the milk or cream at the point of origin, showing the grade and purity of the fluid milk or cream, and a copy of this certificate shall be filed with the South Carolina State Board of Health and the county health officer in the county of desired distribution.

The applicant shall also file with the Commission a certificate under oath showing the name, address and grade of milk of each person from whom the applicant obtains milk or cream and a copy of this certificate shall be filed with the South Carolina State Board of Health and the county health officer in the county of desired distribution.

1953 (48) 279.

§ 32-1610.14. Permit to be for lowest grade of milk handled by applicant.

The Commission shall issue no permit to an applicant for a grade of milk or cream higher than the lowest grade of milk or cream the applicant produces or obtains from others.

1953 (48) 279.

§ 32-1610.15. Rules and regulations as to standards, etc.

The Commission shall establish, determine, fix and promulgate rules and regulations containing all the necessary definitions, conditions, standards and classifications of the type, kind, quality, conditions of production, sanitary conditions and other reasonable requirements that must be complied with before milk or cream is shipped, transported, carried or brought into this State. In order to protect the health of the people of the State by guaranteeing a pure supply of milk, the rules and regulations shall prohibit the importation into this State for human consumption as fluid milk of any grade of milk without being properly graded and

labeled according to the rules and regulations of the Commission and those established by the State Board of Health and all importers of fluid milk shall submit complete proof that the milk so imported is so graded and labeled.

1953 (48) 279.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Dairy Commission, State, in Volume 7.

§ 32-1610.16. Information from other authorities.

Nothing herein contained shall prohibit the Commission from securing from the State Board of Health or any State agency charged with the duty of inspecting and grading dairy products evidence as to the grade and purity of fluid milk or cream, but this information shall not relieve the Commission of the duty of determining whether or not any permit or authority authorized to be issued under this article should be issued.

1953 (48) 279.

§ 32-1610.17. Notice of shipments.

After the permit herein provided is obtained, the shipper holding such permit may continue to ship fluid milk or cream into this State for fluid distribution during the period allowed by the permit, if the Commission shall be given advance notice of each shipment, including the amount to be shipped, date of proposed shipment, the grade of milk or cream to be shipped and the person or firm to whom the milk or cream is to be shipped. However, out-of-State shippers of bottled or packaged milk, delivered into the State on established routes, shall only be required to file reports with the Commission on a monthly basis or as often as may be deemed necessary by the Commission in lieu of the requirements as to the advance notice. The Commission may prescribe the form and method of such advance notice.

1953 (48) 279.

§ 32-1610.18. Suspension, revocation and termination by lapse of time of permits.

The Commission may temporarily suspend, upon twenty-four hours' notice to a permit holder, any permit issued under authority of § 32-1610.9 if it is found by it that any of the conditions of the permit or any of the rules, regulations and laws have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit and the Commission shall, immediately after prompt hearing and such other examination or inspection as it deems proper, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. Any permit issued by the Commission under the authority of § 32-1610.9 may be revoked upon the violation by the holder of the permit of any of the terms, conditions, rules and regulations issued and promulgated by authority of § 32-1610.15. All permits issued under the authority of § 32-1610.9 shall become null and void after the thirty-first of December of each year.

1953 (48) 279.

§ 32-1610.19. Temporary or emergency permits.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the State, the Commission may issue to approved permit holders, or to non-permit holders, temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area in accordance with such regulations as the Commission may prescribe for each temporary permit.

1953 (48) 279.

§ 32-1610.20. Stop-sale orders.

It shall be the duty of the Commission to issue and enforce a written or printed "Stop-sale, use or removal" order to the owner or custodian of any quantity of milk or cream imported, transported or brought into this State and to hold the milk or cream at a designated place when the Commission finds that such milk or cream does not meet the requirements of the provisions of this article or the rules and regulations promulgated hereunder until the law has been complied with and such violation has been otherwise legally disposed of by written authority or by written order by the Commission, directing the owner or custodian to remove the milk or cream from the State. The Commission shall release the milk or cream so withdrawn from sale when the requirements of the provisions of this article and the rules and regulations promulgated hereunder have been complied with and upon payment by the out-of-State shipper of all costs and expenses incurred in connection with the withdrawal.

1953 (48) 279.

§ 32-1610.21. Commission to have access to dairies, etc.

For the purpose of enforcing this article and rules and regulations promulgated hereunder, the Commission or its agents shall have free access at all reasonable hours to any dairy, milk processing plant, distributing plant, milk receiving station or established depot, tank, truck or vehicle which contains milk, for the purpose of inspecting any milk or cream or containers, machinery or devices pertaining to the production, transportation, distribution, bottling, packaging or storage of milk or cream, and may obtain samples of any such milk or cream for inspection.

1953 (48) 279.

§ 32-1610.22 Reports of importers, etc.

Further to enforce this article, every such person importing, transporting into, receiving or causing to be brought into this State fluid milk or cream for sale for fluid distribution shall furnish the Commission, upon forms to be furnished by it, a detailed statement of the quantities, grades and classifications of milk purchased in the previous month and the grade, classification and manner in which such milk was distributed or sold. Such reports shall include all imported milk purchased from out-of-State producers or shippers or purchased, sold or transferred between plants, distributors, affiliates and subsidiaries. And the Commission may require such reports as will enable it to determine the quantities of imported milk purchased and the grade or classification under which it was purchased and it shall be unlawful for such person to sell or distribute any imported milk in a grade or classification higher than that in which it was purchased, except upon written permission by the Commission for limited emergency purposes vital to the health of the people of this State or any community or section thereof.

1953 (48) 279.

§ 32-1610.23. Check of records by Commission; failure to provide.

For the purposes of § 32-1610.22, the Commission, or its agents, may enter at all reasonable times places where books, papers, records or documents relating to transactions involving the sale of fluid milk or cream, as herein provided, are kept and may inspect and copy the same. The Commission shall audit, when deemed necessary, distributors' records to insure that South Carolina dairy farmers are paid according to the agreements between them and their distributors. Failure to provide such records as are required by this article and the rules and regulations applicable thereto or to make such reports as are properly required shall be a violation of this article.

1953 (48) 279.

§ 32-1610.24. Commission may make regulations.

The Commission may make such regulations not in conflict with this article as shall be necessary to make the provisions of this article effective and insure the proper enforcement thereof and a violation of such regulations shall be deemed a violation of this article.

1953 (48) 279.

Cross reference.—For rules and regulations promulgated under authority of this section, see Rules and Regulations, Dairy Commission, in Volume 7.

§ 32-1610.25. Municipality may provide higher standards.

Nothing contained in this article or in any rule or regulation adopted pursuant hereto shall be construed to limit or prohibit any city or municipality within this State from making any rule or regulation or adopting any ordinance with respect to the subject matter providing higher standards of sanitation and quality than those provided herein.

1953 (48) 279.

§ 32-1610.26. No power to classify locally produced milk or control price.

Nothing contained in this article shall be construed as giving the Commission the power to fix, prescribe or control the price or classification of milk or dairy products produced in the State.

1953 (48) 279.

§ 32-1610.27. Application of article.

The provisions of this article shall not be construed as extending to or applying to evaporated milk, powdered whole milk, powdered skim milk or cream for manufacturing purposes, except that records and information required under §§ 32-1610.22 and 32-1610.23 shall be furnished concerning such products upon request of the Commission. Out-of-State approved dairy farms producing milk for South Carolina plants under a permit from and in accordance with the local health regulations of the county or city to which the milk is being delivered are exempted from the provisions of this article. The provisions of this article shall not be construed as a limitation upon the authority of the State Board of Health concerning milk and milk products within the State as provided in §§ 32-8 and 32-10, but shall be in addition to and an extension of such authority.

1953 (48) 279.

§ 32-1610.28. Penalties.

Any person found guilty by a court of competent jurisdiction of a violation of any of the provisions of this article or of any of the rules of the Commission promulgated pursuant hereto shall be subject to a fine of not less than ten dollars nor more than one hundred dollars or imprisonment not exceeding thirty days for the first offense. For any subsequent offense he shall be subject to a fine or imprisonment, or both, in the discretion of the court.

1953 (48) 279.

§§ 32-1611 to 32-1631. Milk and cream imported from other states.

Repealed by A. & J. R. 1953 (48) 279.

Cross reference.—See now §§ 32-1610 to 32-1610.28.

ARTICLE 6.*Ice Cream, Ices, etc.***§ 32-1701. Definitions.**

(7) "*Imitation ice cream*" means any frozen substance, mixture or compound, regardless of the name under which it is represented, which is made in imitation or semblance of ice cream or is prepared or frozen as ice cream is customarily prepared or frozen and which is not ice cream, frozen custard, ice milk, sherbet or ice as defined in this section.

(8) "*Ice milk*" means the pure, clean, frozen product made from a combination of two or more of the following ingredients:

Milk products, eggs, water and sugar, with harmless flavoring and with or without harmless coloring, and with or without added stabilizer composed of wholesome edible material. It contains not more than one-half of one per cent, by weight, of stabilizer, not less than four per cent and less than ten per cent, by weight, of milk fat and not less than twelve per cent, by weight, of total milk solids, including milk fat. In no case shall any ice milk contain less than one and three-tenths pounds of total food solids to the gallon and it must weigh not less than four and one-fourth pounds to the gallon.

Ice milk, when sold in a package or wrapper, shall be labeled in plain legible type, not less than eight point, with the words "Ice Milk." This shall not include the containers used when ice milk is drawn in front of the customers' eyes. A sign on a white card with letters not less than four inches in height and two inches in width containing the words "Ice Milk Sold Here" shall be posted by the vendor in a conspicuous place in the salesroom in every establishment where ice milk is sold, except that the sign shall not be required in those establishments selling only ice milk items in packages or wrappers each item of which is labeled in plain legible letters not less than eight point type with the words "Ice Milk."

1953 (48) 40.

Effect of amendment.—The amendment added subsection (8) and added the words "ice milk" in subsection (7). The remaining paragraphs of the section were not affected by the amendment and are therefore not set forth above.

§ 32-1703. Pasteurization required.

All milk and milk products used in the manufacture of ice cream, ice milk, frozen custard or sherbet, or the entire mix with or without flavor or color, shall be pasteurized in accordance with rules and regulations to be adopted as herein provided.

1942 Code § 5129-1; 1934 (38) 1603; 1941 (42) 119; 1953 (48) 40.

Effect of amendment.—The amendment added the words "ice milk."

§ 32-1704. False labels; misrepresentation, etc.

(4) Offer for sale ice cream, custard ice cream, French ice cream, ice milk, French custard, frozen custard, sherbet, ice or fruit ice from any container, compartment or cabinet which contains any other article.

1953 (48) 40.

Effect of amendment.—The amendment added the words "ice milk," in the foregoing paragraph (4). The other paragraphs of the section were not affected by the amendment and are therefore not set forth above.

§ 32-1709. Exemptions from article.

Nothing contained in this article shall be construed to apply to ice cream and similar frozen products manufactured and sold by social, fraternal, charitable, educational, religious or beneficent organizations, nor to a farmer making and selling from the products of his farm ice cream, custard ice cream, ice milk, French ice cream, French custard, frozen custard or sherbet if the standards of purity and quality prescribed by this article are maintained in all such cases.

1942 Code § 5129-1; 1934 (38) 1603; 1941 (42) 119; 1951 (47) 445; 1953 (48) 40.

Effect of amendment.—The amendment added the words "ice milk."

§ 32-1710. Enforcement; rules and regulations.

The Department of Agriculture shall enforce the provisions of this article and shall from time to time, after inquiry and public hearing, adopt and promulgate rules and regulations to supplement and give full effect to the provisions of this article. The State Board of Health shall establish and enforce sanitary regula-

tions pertaining to the manufacture and distribution of frozen desserts, including the sanitary condition of (a) buildings, grounds and equipment where frozen desserts are manufactured, (b) persons in direct physical contact with frozen desserts during manufacture, (c) containers in which frozen desserts are held or shipped and (d) premises, buildings, surroundings and equipment where frozen desserts are sold. Such rules and regulations shall be filed and open for public inspection at the principal office of the Department and shall have the force of law.

1942 Code § 5129-1; 1934 (38) 1603; 1941 (42) 119; 1953 (48) 40.

Cross reference.—For rules and regulations promulgated under authority of this section, see Rules and Regulations, Agriculture Commissioner, in Volume 7.

Effect of amendment.—The sanitary regulations now required to be established and enforced by the State Board of Health under the second sentence were formerly

required to be included among the rules and regulations adopted by the Department of Agriculture under the first sentence.

Powers of Health Department under this section are embraced within those of § 32-8. Atty. Gen. Op., Apr. 1, 1954.

CODE OF LAWS
OF
SOUTH CAROLINA
1952

1954 Cumulative Supplement

ANNOTATED

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ST. MATTHEWS, S. C.

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NOTICE

This pocket supplement is not official. At the direction of the Committee on Statutory Laws the Acts as enacted have been edited in various particulars to conform them to the style and arrangement of the Code of 1952 and to make them more readily usable by the practitioner for ordinary work. For further details see the Foreword in the Pocket Supplement to Volume 1.

Code of Laws of South Carolina 1952

1954 CUMULATIVE SUPPLEMENT

Title 33.

Highways, Bridges and Ferries.

- Chap. 2. State Highway Department, § 33-35.
3. State Highway System, §§ 33-106.1 to 33-233.1.
4. Financial Matters, § 33-257.
11. County Road Taxes, §§ 33-1001 to 33-1245.
13. Special Provisions for Particular Counties, §§ 33-1520 to 33-1928.

CHAPTER 2.

STATE HIGHWAY DEPARTMENT.

Article 2.

The State Highway Commission.

- Sec.
33-35. Compensation of commissioners.

ARTICLE 2.

The State Highway Commission.

§ 33-35. Compensation of commissioners.

Each district highway commissioner shall receive compensation in the amount of one hundred dollars per annum and official expenses as provided by law for members of State boards and commissions.

1951 (47) 457, 506; 1953 (48) 394.

Effect of amendment.—The amendment added the words “in the amount of one hundred dollars per annum.”

CHAPTER 3.

STATE HIGHWAY SYSTEM.

Article 1.

Composition of and Change in System.

- Sec.
33-106.1. Additions to secondary system.
33-106.2. Exchange of roads into and out of such system.
33-106.3. Substitute of road in Anderson County.
33-106.4. Roads and streets to certain housing developments in Barnwell County.
33-106.5. Portion of Oak Street in Swansea in Lexington County removed from State highway system.
33-106.6. Road in Oconee County removed from State highway system.
33-106.7. Sections of highways in Greenville County removed from State Highway System.

Article 2.

Rights of Way, Lands and Condemnation.

- Sec.
33-134. [Repealed.]
33-139. Appeal to court.
33-146.1. Such records to be maintained in register's office in certain counties.

Article 6.

Damage Claims.

- 33-229. When suits may be brought; extent of recovery.
33-232. When absence of contributory negligence must be alleged.
33-233.1. When §§ 33-229 to 33-233 inapplicable.

ARTICLE 1.

*Composition of and Change in System.***§ 33-106.1. Additions to secondary system.**

The State Highway Department shall take over and accept as a part of the State Highway Secondary System the roads remaining in the various county road systems which have been maintained by the respective counties or so much mileage thereof as the availability of funds for construction of secondary State highways in a county may justify. But municipal streets which are extensions of State highways may be added to the State Highway Secondary System in lieu of an equal mileage of county roads. The roads to be placed in the State Highway System hereunder shall be selected by the State Highway Department by and with the approval of the Senator and at least one-half of the members of the House of Representatives in each county. Maintenance jurisdiction by the State Highway Department of roads added to the State Highway Secondary System pursuant to the provisions of this section shall not commence until construction to State highway standards shall have started.

1952 (47) 2031.

§ 33-106.2. Exchange of roads into and out of such system.

The State Highway Department, with the approval of the Senator and at least one-half of the members of the House of Representatives in each county may delete and remove from the State Highway Secondary System of roads in any county any roads which are of low traffic importance and substitute therefor an equal or less mileage of other roads of higher traffic importance as determined by traffic surveys and estimates. Maintenance responsibility for roads deleted and removed from the State Highway Secondary System, pursuant to the provisions of this section, shall be transferred from the jurisdiction of the State Highway Department to the jurisdiction of the county or municipality in which such roads are situated effective upon notice from the State Highway Department of official action deleting and removing the roads from the State highway system.

1952 (47) 2031.

§ 33-106.3. Substitute of road in Anderson County.

With the approval of the Senator and at least one-half of the members of the House of Representatives from *Anderson* County, a section of road in *Anderson* County of approximately equal length may be added to the State highway system in lieu of the road removed therefrom by Act No. 859 of 1952, A. & J. R. 1952 (47) 2120.

1952 (47) 2120.

§ 33-106.4. Roads and streets to certain housing developments in Barnwell County.

The State Highway Department, with the approval of the *Barnwell* County legislative delegation, may construct any necessary service and access roads and streets to housing developments in *Barnwell* County in the vicinity of the Savannah River Plant of the A. E. C. out of *Barnwell* County's allocation of secondary road construction funds and may maintain such roads so constructed as parts of the State Highway Secondary System.

1952 (47) 2040.

§ 33-106.5. Portion of Oak Street in Swansea in Lexington County removed from State highway system.

The east end block of Oak Street between two school buildings in the town of *Swansea* in *Lexington* County, is hereby taken out of the State highway system.

1953 (48) 162.

§ 33-106.6. Road in Oconee County removed from State highway system.

The section of road in *Oconee* County designated as Road 145 and extending from U. S. Route 76 approximately 0.2 mile west of the *Oconee-Anderson* County line southwesterly and westerly approximately 1.2 miles to Road 22 is hereby removed from the State highway system.

1952 (47) 2033.

§ 33-106.7. Sections of highways in Greenville County removed from State highway system.

The following sections of secondary State highways through property acquired by Furman University in *Greenville* County are hereby removed from the State highway system:

(1) A section of road addition No. 88 from the eastern boundary of Furman University property approximately two-tenths mile west of U. S. route 25 westerly and northwesterly to road 170.

(2) A section of road addition No. 133 from its intersection with road addition No. 88 on Furman University property southwesterly to road addition No. 170.

1954 (48) 2147.

§ 33-112. State highways within municipalities.

The term "incorporated municipalities" Highway Dept., ... S. C., 83 S. E. used in this section clearly refers to cities (2d) 209 (1954). and towns. *Hinnant v. South Carolina State*

ARTICLE 2.

*Rights of Way, Lands and Condemnation.***§ 33-122. Acquisition of property generally.**

Cited in *Welling v. Clinton Newberry*
Natural Gas Authority, 221 S. C. 417, 71
S. E. (2d) 7 (1952).

§ 33-134. Demand for jury to assess damages; survey not to be prevented thereby.

Repealed by A. & J. R. 1953 (48) 355.

§ 33-139. Appeal to court.

Any person interested, including the State Highway Department, may appeal to the court of common pleas from a decision of the board. Notice and grounds of appeal shall be served by mail or otherwise upon the State Highway Department within twenty days after the receipt of the resolution of the condemnation board. The clerk of court shall docket such appeals on calendar No. 1 and they shall be heard in said court de novo before a jury, unless the right to jury trial be waived, as in other cases provided by law. Such appeals may be called up for trial out of their order by either party. The verdict of the jury in such cases shall be final, unless set aside for the reasons for which verdicts may be set aside in other cases or unless the judgment of the court thereupon be reversed, for error of law, on appeal to the Supreme Court. Unless the appellant shall recover on the appeal in which he shall be the actor twenty percent more than the amount fixed by the board, he shall pay the costs and disbursements of the appeal and judgment may be entered against him therefor.

1951 (47) 457; 1953 (48) 355.

Effect of amendment. — Formerly the to be served within ten days after the re-
notice and grounds of appeal were required cept of the resolution.

§ 33-146.1. Such records to be maintained in register's office in certain counties.

In *Greenville*, *Charleston* and *Spartanburg* Counties all deeds, other instruments or papers required to be filed under the provisions of § 33-146 in the office of the

clerk of the court of common pleas shall be filed in the office of the register of mesne conveyances and all duties required of clerks of court in other counties in said section are devolved upon the register of mesne conveyances of *Greenville*, *Charleston* and *Spartanburg* Counties. The office required to be kept by the State Highway Department under said section in the offices of the clerks of the court of common pleas shall be maintained in *Greenville*, *Charleston* and *Spartanburg* Counties in the offices of the registers of mesne conveyances.

1952 (47) 2041.

ARTICLE 5.

Construction Contracts and Purchases.

§ 33-222. Advertisement for contracts or purchases over one thousand dollars.

Cross reference.—For rules and regulations promulgated under authority of this section, see Rules and Regulations, Highways, State Commission, in Volume 7.

ARTICLE 6.

Damage Claims.

§ 33-229. When suits may be brought; extent of recovery.

Any person who may suffer injury to his person or damage to his property by reason of (a) a defect in any State highway, (b) the negligent repair of any State highway or (c) the negligent operation of any vehicle or motor vehicle in charge of the State Highway Department while such vehicle or motor vehicle is actually engaged in the construction or repair of any of such highways may bring suit against the Department for the actual amount of such injury or damage not to exceed in case of property damage the sum of fifteen hundred dollars and in case of personal injury or death the sum of eight thousand dollars.

1951 (47) 457; 1953 (48) 53.

Effect of amendment.—The amendment raised the limit of recovery in case of personal injuries from \$4,000 to \$8,000.

Defense in action against State Highway Department that accident occurred within limits of Folly Beach Township, a municipal corporation, and by reason of § 33-234 action not maintainable, stricken

because the Township is not a municipality as referred to in that section which is applicable only to a city or town. *Hinnant v. South Carolina State Highway Dept.*, ... S. C. ..., 83 S. E. (2d) 209 (1954).

Applied in *Thompson v. South Carolina Highway Department*, 224 S. C. 338, 79 S. E. (2d) 160 (1953).

§ 33-232. When absence of contributory negligence must be alleged.

Any person bringing a suit against the State Highway Department must allege and prove that he did not bring about the injury by his own negligence, nor negligently contribute thereto.

1951 (47) 457; 1953 (48) 362.

Effect of amendment.—The amendment eliminated a sentence providing that the section should not apply to injuries on

roads under construction when the Department is protected by an indemnity bond. See now § 33-233.1.

§ 33-233.1. When § 33-229 to 33-233 inapplicable.

The provisions of §§ 33-229 through 33-233 shall not apply to injuries on roads under construction when the Department is protected by an indemnity bond.

1953 (48) 362.

§ 33-234. Liability for damage arising within a municipality.

The term "municipality" used in this section means a city or town, and not a township or other subdivision of the State, and the provision of law applicable to municipalities, referred to in this section, is plainly § 47-70 which authorizes actions against any city or town, and there being

no similar or other enabling act which is applicable to a township, a governmental subdivision of the State, it is immune from suit for damages such as that authorized under this section. *Hinnant v. South Carolina State Highway Dept.*, ... S. C. ..., 83 S. E. (2d) 209 (1954).

CHAPTER 4.
FINANCIAL MATTERS.

Article 1.
General provisions.

Sec.
33-257. Execution of such obligations.

ARTICLE 1.

Issue of Bonds or Certificates of Indebtedness.

§ 33-257. Execution of such obligations.

All State highway bonds or State highway certificates of indebtedness issued under this chapter shall be signed by the Governor and the State Treasurer. In the instance of the Governor, he may sign such obligations by a facsimile of his signature. The great seal of the State shall be affixed to, impressed or reproduced upon each of them and each shall be attested by the Secretary of State. The coupons attached to such State highway bonds or State highway certificates of indebtedness shall be authenticated by a facsimile signature of the State Treasurer who is in office on the date of such highway bonds or State highway certificates of indebtedness. The delivery of the State highway bonds or State highway certificates of indebtedness so executed and authenticated shall be valid notwithstanding any changes in officers or seal occurring after such execution or such authentication.

1951 (47) 457; 1953 (48) 199.

Effect of amendment.—The second sentence is new and the phrase “or reproduced” in the third sentence is new.

CHAPTER 5.

OBSTRUCTIONS OR DAMAGES TO ROADS OR DRAINAGE THEREOF.

ARTICLE 4.

Gates.

§ 33-512. Gates on private roads.

The gates authorized by this section are such as are erected to prevent the passage of animals, not people, and it is contemplated that they be parts of fences to pro-

vide enclosures, not mere obstructions to travel. *Owens v. Cantrell*, 219 S. C. 433, 65 S. E. (2d) 773 (1951).

CHAPTER 8.

PROVISIONS AFFECTING FERRIES ONLY.

ARTICLE 2.

Ferry Service across Mackays Creek and Skull Creek in Beaufort County.

§ 33-724. Rules and regulations; load and size limits.

Cross reference.—For rules and regulations promulgated under authority of this section, see Rules and Regulations, Highway, State Commission, in Volume 7.

ARTICLE 3.

Provisions Regarding Certain Other Ferries.

§ 33-733. Ferries across Black River and Catawba River.

Cited in *Jeff Hunt Machinery Co. v. South Carolina State Highway Dept.*, 217 S. C. 423, 60 S. E. (2d) 859 (1950).

CHAPTER 10.

COUNTY ROADS, BRIDGES AND FERRIES GENERALLY.

ARTICLE 5.

Suits for Injuries on Highway.

§ 33-921. Damages from defective highways, etc.

I. GENERAL CONSIDERATION.

Defendant's negligence assumed a jury question when not raised on appeal.—On appeal by defendant county from adverse verdict, where issues raised on appeal did not involve whether or not defendant was negligent, it would be assumed that defendant conceded that the evidence left a jury question on that issue. *Coffee v. Anderson County*, 224 S. C. 477, 80 S. E. (2d) 51 (1954).

Cited in *Jeff Hunt Machinery Co. v. South Carolina State Highway Dept.*, 217 S. C. 423, 60 S. E. (2d) 859 (1950).

III. CONTRIBUTORY NEGLIGENCE

In order for the "act" as used in the phrase "by his own act" in this section to bar recovery, it must be an act on the part of the person seeking recovery which contributes to the injury as a direct and proximate cause thereof. *Coffee v. Anderson County*, 224 S. C. 477, 80 S. E. (2d) 51 (1954).

Jury question if any evidence indicates plaintiff's due care.—In determining whether or not there was any evidence to go to jury on issue of contributory negligence under the scintilla rule applicable in this State, it is necessary to view the evidence

most favorably to the plaintiff respondent. And the Supreme Court, not being concerned with the weighing of the evidence, but solely with the law, must only inquire if the facts and circumstances reasonably tend to support an inference of due care on the part of the plaintiff. *Coffe v. Anderson County*, 224 S. C. 447, 80 S. E. (2d) 51 (1954).

Plaintiff's knowledge of and familiarity with defective condition of the roadway not necessarily controlling. Mere knowledge of defects will not of itself give rise to the conclusion that the only inference is that plaintiff was negligent, unless it is made to appear that the danger, likely to result therefrom, was so obvious that no person of ordinary prudence would have attempted to use it. *Coffee v. Anderson County*, 224 S. C. 477, 80 S. E. (2d) 51 (1954).

One should technically violate the law if by so doing he may prevent injuries and damages to himself or to another, but whether or not a reasonably prudent person would have driven on left side of road under facts in this case was a matter for the jury. *Coffee v. Anderson County*, 224 S. C. 477, 80 S. E. (2d) 51 (1954).

§ 33-923. Claim prerequisite to suit; time limit on suit.

The intention of the legislature in passing this section was to give the county prompt notice of any alleged claims, so that the county might promptly and properly investigate the occurrence, and thereby determine its liability, if any. *Braudie v. Richland County*, 219 S. C. 130, 64 S. E. (2d) 248 (1951).

Substantial compliance. — A plaintiff should not be denied a trial upon the merits of her case by a mere failure to make a literal compliance with this section when

she has, in fact, and in law, made a substantial compliance by appearing before the county supervisor and county board of commissioners at a former meeting and presenting to them all the facts and circumstances giving rise to her cause of action, and by notifying the county attorney, by letter, of such facts, two months after the accident. *Braudie v. Richland County*, 219 S. C. 130, 64 S. E. (2d) 248 (1951).

Applied in *Braudie v. Richland County*, 219 S. C. 57, 59 S. E. (2d) 548 (1950).

§ 33-925. Burden of proof if county notified of defect.

Applied in *Coffee v. Anderson County*, 224 S. C. 477, 80 S. E. (2d) 51 (1954).

CHAPTER 11.

COUNTY ROAD TAXES.

Article 6.
Beaufort County.

Sec.
33-1001. Road tax.

Article 17.
Greenville County.

33-1113. Special six mill road tax.

Article 24.
Newberry County.

Sec.
33-1206. [Repealed.]

Article 27.
Richland County.
33-1241 to 33-1245. [Repealed.]

ARTICLE 6.

*Beaufort County.***§ 33-1001. Road tax.**

All male persons of *Beaufort* County liable to the payment of poll tax, except city and town police officers, shall be required, annually, to pay a road tax of three and one half dollars.

1942 Code § 4029; 1932 Code § 4029; Civ. C. '22, § 2965; 1913 (28) 176; 1914 (28) 697; 1915 (29) 445; 1916 (29) 898; 1917 (30) 252; 1919 (31) 293; 1921 (32) 233; 1953 (48) 198.

Effect of amendment.—The amendment excepted city and town police officers.

ARTICLE 17.

*Greenville County.***§ 33-1113. Special six mill road tax.**

Provisions of A. & J. R. 1953 (48) 915 make up this section.

ARTICLE 24.

*Newberry County.***§ 33-1206. Commutation road tax.**

Repealed by A. & J. R. 1952 (47) 1706.

ARTICLE 27.

*Richland County.***§§ 33-1241 to 33-1245. Richland County road tax.**

Repealed by A. & J. R. 1953 (48) 197.

CHAPTER 13.

SPECIAL PROVISIONS FOR PARTICULAR COUNTIES.

**Article 9.
Chester County.**

Sec.
33-1520. County manager to supervise roads.
33-1521 to 33-1523. [Repealed.]

**Article 12.1.
Darlington County.**

33-1566. [Repealed.]

**Article 21.1.
Horry County.**

33-1711. Report of damage to bridge.
33-1712. Same; penalties.

**Article 22.
Kershaw County.**

33-1733. Chain gang superintendent to furnish equipment and men.

**Article 23.
Lancaster County.**

33-1743. Borrowing part of cost of contract with State Highway Department.

**Article 26.
Marlboro County.**

Sec.
33-1795. Facilitating construction of farm-to-market roads.

**Article 28.
Oconee County.**

33-1821. [Repealed.]
33-1821.1. Duties and powers of board of county commissioners with respect to roads.

**Article 30.
Richland County.**

33-1852. Relinquishment of right-of-way for road purposes.

**Article 36.
York County.**

33-1926. Use of gasoline tax revenue to pay general highway bonds.
33-1927. Application.
33-1928. No pledge created by §§ 33-1926 and 33-1927.

ARTICLE 9.

*Chester County.***§ 33-1520. County manager to supervise roads.**

Provisions from A. & J. R. 1952 (47) 2127 make up this section.

§§ 33-1521 to 33-1523. Supervisor of roads.

Repealed by A. & J. R. 1952 (47) 2127.

Cross reference.—See now § 33-1520.

ARTICLE 12.1.

*Darlington County.***§ 33-1566. Road programs.**

Repealed by A. & J. R. 1954 (48) 1724.

ARTICLE 21.1.

*Horry County.***§ 33-1711. Report of damage to bridge.**

Any person who operates a truck or other motor vehicle which breaks down or damages any bridge in *Horry County* shall report the fact immediately, in writing, to the governing body of the county. Such report shall give the weight of the truck or other motor vehicle involved, make, license number, owner of the vehicle and location of the bridge. The report shall also contain the time that the damage was incurred, along with all circumstances.

1953 (48) 308.

§ 33-1712. Same; penalties.

Any person failing to comply with the provisions of § 33-1711 shall be imprisoned for not more than thirty days or fined a sum not exceeding one hundred dollars or both, for the first offense. The second and each subsequent offense shall be punished in the discretion of the court.

1953 (48) 308.

ARTICLE 22.

*Kershaw County.***§ 33-1733. Chain gang superintendent to furnish equipment and men.**

Editor's note.—See, as possibly affecting 486, incorporated by reference in this Supplement as part of § 14-2450.

ARTICLE 23.

*Lancaster County.***§ 33-1743. Borrowing part of cost of contract with State Highway Department**

Provisions of A. & J. R. 1953 (48) 1040 make up this section.

ARTICLE 26.

*Marlboro County.***§ 33-1795. Facilitating construction of farm-to-market roads.**

Provisions of A. & J. R. 1953 (48) 1115 make up this section.

ARTICLE 28.

*Oconee County.***§ 33-1821. Duties of advisory board with respect to roads.**

Repealed by A. & J. R. 1954 (48) 1435.

Cross reference.—See now § 33-1821.1.

§ 33-1821.1. Duties and powers of board of commissioners with respect to roads.

Provisions from § 10 of A. & J. R. 1954 (48) 1435 make up this section.

ARTICLE 30.

*Richland County.***§ 33-1852. Relinquishment of right-of-way for road purposes.**

When any right-of-way for road purposes has been granted to *Richland County* or any agency thereof and has not been used as such and the county does not intend to use the same in the future, the board of commissioners may relinquish its right to such right-of-way to the original grantor or his successor in title. A majority of the board must approve such action and upon its approval a proper instrument executed by the chairman of the board and duly attested by its secretary shall be sufficient to relinquish all of the county's rights and interests in such easement or right-of-way.

1953 (48) 451.

ARTICLE 36.

*York County.***§ 33-1926. Use of gasoline tax revenue to pay general highway bonds.**

Whenever general obligation bonds of *York County*, issued to obtain funds to construct, reconstruct, improve or repair roads or bridges in the county, shall be outstanding, the principal and interest of such bonds shall be paid, so far as possible, from the sums which the county shall receive from time to time, or has heretofore received, from the distribution of the one cent per gallon tax imposed upon the sale of gasoline, or any substitute thereof, or any combination thereof, irrespective of whether or not such funds shall be pledged to the payment of such bonds.

1953 (48) 52.

§ 33-1927. Application.

The custodian of any such funds in *York County* is directed to observe the provisions of § 33-1926 and to apply so much of such fund as the county shall receive, as aforesaid, as is available, to the extent necessary to effect the payment of the principal and interest of all general obligation bonds of the county, issued for the purposes mentioned in § 33-1926, as may from time to time hereafter be outstanding.

1953 (48) 52.

§ 33-1928. No pledge created by §§ 33-1926 and 33-1927.

The provisions of §§ 33-1926 and 33-1927 shall not be deemed to effect a pledge of the revenues referred to therein.

1953 (48) 52.

Title 36.

Housing and Redevelopment.

Chap. 1. State Housing Law, § 36-3.

2. The Housing Authorities Law, § 36-102.

5. Dwellings Unfit for Human Habitation in Municipalities of Over Five Thousand, §§ 36-503 to 36-508.1.

CHAPTER 1.

STATE HOUSING LAW.

Article 1.

General Provisions.

Sec.

36-3. General duties of State Development Board with respect to housing.

ARTICLE 1.

General Provisions.

§ 36-3. General duties of State Development Board with respect to housing.

The State Development Board, hereafter in this chapter sometimes called the Board, may :

* * *

1942 Code § 5271-10; 1933 (38) 176; 1945 (44) 156; 1954 (48) 1745.

Effect of amendment.—The amendment Board in the first two lines of this section changed State Research, Planning and Development Board to State Development Board. The section otherwise remains effective.

CHAPTER 2.

THE HOUSING AUTHORITIES LAW.

Article 1.

General Provisions.

Sec.

36-102. Definitions.

ARTICLE 1.

General Provisions.

§ 36-102 Definitions.

* * *

(1) The term “Board” shall mean the State Development Board; * * *.

1942 Code §§ 5271-31, 5271-32; 1934 (38) 1368; 1937 (40) 431; 1942 (42) 1742; 1945 (44) 156; 1954 (48) 1745.

Effect of amendment.—The amendment Board in item (1). The section otherwise changed State Research, Planning and Development Board to State Development Board. The section otherwise remains effective.

CHAPTER 5.

DWELLINGS UNFIT FOR HUMAN HABITATION IN MUNICIPALITIES OF OVER FIVE THOUSAND.

Sec.

36-503. Provisions of ordinances relating to such dwellings.

Sec.

36-508.1. Same; commission may act for public officer.

§ 36-503. Provisions of ordinances relating to such dwellings.

Upon the adoption of an ordinance finding that dwelling conditions of the character described in § 36-502 exist within a municipality, the governing body of such

municipality may adopt ordinances relating to the dwellings within such municipality which are unfit for human habitation. Such ordinances may include the following provisions:

1942 Code § 5271-83; 1939 (41) 347; 1945 (44) 156; 1954 (48) 1719.

Effect of amendment.—The amendment second sentence above. The section other-changed “shall” to “may” in portion of wise remains effective.

§ 36-508.1. Same; commission may act for public officer.

Any municipality adopting an ordinance under the provisions of this chapter may establish a commission composed of not less than three nor more than seven duly qualified electors of such municipality, to exercise any of the powers authorized to be granted to the public officer by the terms of this chapter. The members of such commission shall be appointed by the mayor with approval of a majority of the governing body of the municipality and shall serve for such term and compensation as designated by the ordinance. The commission shall exercise the powers prescribed by the ordinance and formulate the rules of procedure before it. A majority of the members must be present for the conduct of its business and decisions must be by majority vote of the members present.

1954 (48) 1719.

Title 37.

Insurance.

Chap. 3. Insurance Companies, Brokers and Agents Generally, §§ 37-122 to 37-169.1.

3.1. Group Life Insurance, §§ 37-301 to 37-310.

9. Fraternal Benefit Associations, § 37-907.

CHAPTER 2.

INSURANCE DEPARTMENT.

ARTICLE 1.

General Provisions.

§ 37-52. Insurance Commissioner; election, term, qualifications and compensation.

Cited in *Johnson v. Independent Life, etc., Ins. Co.*, 94 F. Supp. 959 (1951).

§ 37-66. Power of court on review.

Applied in *Independence Ins. Co. v. Independent Life, etc., Ins. Co.*, 218 S. C. 22, 61 S. E. (2d) 399 (1950).

CHAPTER 3.

INSURANCE COMPANIES, BROKERS AND AGENTS GENERALLY.

**Article 2.
License Fees of Companies.**

Sec.
37-122. Two per cent graded license fees on foreign life insurance companies.

**Article 3.
Conduct of Business Generally.**

Sec.
37-149.1. Investments in farm loan bonds.
37-158. [Repealed.]
37-169.1. Spendthrift provision in policy settlement agreement valid.

ARTICLE 1.

*Certificates of Authority and Other Requirements for Doing Business.***§ 37-108. Foreign companies with names similar to others not to be qualified.**

Refusal to relicense previously licensed company.—The Insurance Commissioner, after licensing a foreign insurance company prior to the effective date of the 1947 act from which this section was codified, had no right thereafter to refuse to relicense it on the ground of similarity of its name to that of a previously licensed company as provided in this section. *Independence Ins. Co. v. Independent Life, etc., Ins. Co.*, 218 S. C. 22, 61 S. E. (2d) 399 (1950).

ARTICLE 2.

*License Fees of Companies.***§ 37-122. Two per cent graded license fees on foreign life insurance companies.**

In addition to other annual license fees provided by law the Commissioner shall require each life insurance company of any class licensed by him, not incorporated under the laws of this State, to pay as an additional and graded license fee an amount equal to two per cent on the total premiums, that is, total premium income or total premium receipts from the State, less any dividend or bonuses paid in cash or applied in abatement of premiums or credited to policyholders of such company as collected from citizens of or residents of this State during the time the company has done business in this State since making the last return for such license fee. For the purposes of this section and §§ 37-133 and 37-301 to 37-309 premiums shall not include considerations received for annuity contracts.

1947 (45) 322; 1953 (48) 493.

Effect of amendment.—The amendment “or credited to policyholders” in the first added the second sentence and the phrase sentence.

ARTICLE 3.

*Conduct of Business Generally.***§ 37-141. What contracts deemed made in State.**

Applied in *Schafer v. Maryland Casualty Company*, 123 F. Supp. 873 (1954).

§ 37-149.1. Investments in farm loan bonds.

Any insurance company organized under the laws of this State may invest in or lend money on the security of Federal farm loan bonds issued by any Federal land bank pursuant to the Federal Farm Loan Act, as amended, bonds issued by the Federal Farm Mortgage Corporation pursuant to the provisions of an act of Congress known as the “Federal Farm Mortgage Corporation Act”; Federal Intermediate Credit Bank debentures issued pursuant to the Federal Farm Loan Act, as amended, and debentures issued by the Central Bank for Cooperatives organized under the Farm Credit Act of 1933.

1942 Code § 9049; 1932 Code § 9049; Civ. C. '22 § 5461; 1918 (30) 763; 1919 (31) 133; 1934 (38) 1493; 1952 (47) 1893.

Effect of amendment.—The amendment added Federal Intermediate Credit Bank debentures and debentures of the Central Bank for Cooperatives.

§ 37-158. Group plans.

Editor's note.—This section was ostensibly amended but in effect repealed by § 37-301 to 37-310.

§ 37-161. When policies become incontestable; exceptions.

Time suspended upon filing answer in previous action.—Where insurer, within contestable period, filed answer in action commenced by assignee of beneficiary of policy setting up same defense of fraud in obtaining policy as was here interposed, the running of the contestable period was suspended. *Arnold v. Life Ins. Co. of Ga.*, Westbrook Advance Sheets, No. 16910, filed Sept. 15, 1954.

Unless there is no person, etc.—In accord with paragraph under this catchline in Code in note to § 37-162. See *Arnold v. Life Ins. Co. of Ga.*, Westbrook Advance Sheets, No. 16910, filed Sept. 15, 1954.

§ 37-162. Proceedings to contest policy.

Time suspended upon filing answer in previous action.—Where insurer, within contestable period, filed answer in action commenced by assignee of beneficiary of policy setting up same defense of fraud in obtaining policy as was here interposed, the running of the contestable period was suspended. *Arnold v. Life Ins. Co. of Ga.*

Westbrook Advance Sheets, No. 16910, filed Sept. 15, 1954.

Unless there is no person, etc.—In accord with paragraph under this catchline in Code. See *Arnold v. Life Ins. Co. of Ga.*, Westbrook Advance Sheets, No. 16910, filed Sept. 15, 1954.

§ 37-169.1. Spendthrift provision in policy settlement agreement valid.

When the proceeds of a life insurance policy, becoming a claim by death of the insured, are left with an insurance company under a trust or other agreement, the benefits accruing thereunder after the death of the insured shall not be transferable, nor subject to computation or incumbrance, nor to legal process, except in an action to recover for necessities, if the parties to the trust or other agreement so agree.

1953 (48) 493.

ARTICLE 7.*Agents Generally.***§ 37-233. Who deemed agents of insurance companies.**

Applied in *Hightower v. New York Fire Ins. Co.*, 112 F. Supp. 10 (1953); *Schafer v.*

Maryland Casualty Company, 123 F. Supp. 873 (1954).

§ 37-234. Applicants to be vouched for by companies; procedure when agent's contract cancelled.

The paramount purpose and intent of §§ 37-234 to 37-242 is to safeguard the interest of policyholders by ascertaining that the agents through whom they deal are competent and trustworthy. *Johnson v. Independent Life, etc.*, Ins. Co., 94 F. Supp. 959 (1951).

Records are confidential and privileged.—The requirement of this section that the records furnished by the companies are for the use of the Insurance Department only and not for public inspection is evidence of a legislative intent that they be confidential, and, by inference, privileged. *Johnson v. Independent Life, etc.*, Ins. Co., 94 F. Supp. 959 (1951).

And libel action cannot be based on letter relating to termination of agent's employment.—A letter written to the State Insurance Commissioner by a representative of an insurance company, notifying the Commissioner of the termination of the employment of an agent and stating the reasons therefor, as required by this section, is an absolutely privileged communication, and cannot be made the basis of an action for libel. *Johnson v. Independent Life, etc.*, Ins. Co., 94 F. Supp. 959 (1951).

§ 37-236. Examination for agent's license; when not required.

The Insurance Department is given quasi-judicial powers with regard to the licensing of agents under §§ 37-234 to 37-

242. *Johnson v. Independent Life, etc.*, Ins. Co., 94 F. Supp. 959 (1951).

§ 37-241. Revocation or suspension of license.

Quoted in *Johnson v. Independent Life, etc.*, Ins. Co., 94 F. Supp. 959 (1951).

§ 37-243. Medical examiners of companies exempt from license fee.

Editor's note.—The "of" in last line should be "or".

CHAPTER 3.1.

GROUP LIFE INSURANCE.

Sec.	Sec.
37-301. Types of policies permissible.	37-306. Maximum amount of individual insurance under policy.
37-302. Policies to employers or trustees of employer's funds.	37-307. Provisions required in all policies.
37-303. Policies to creditors.	37-308. Coverage of spouses and minor children by certain policies.
37-304. Policies to labor unions.	37-309. Effect of chapter on existing policies.
37-305. Policies issued to fund of one or more employers in same industry, labor unions, etc.	37-310. Applicability of chapter.

§ 37-301. Types of policies permissible.

No policy of group life insurance shall be delivered in this State unless it conforms to one of the descriptions mentioned in §§ 37-302 to 37-305.

1953 (48) 493.

§ 37-302. Policies to employers or trustees of employer's funds.

Such a policy may be issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "*employees*" shall include the employees of one or more subsidiary corporations and the employees, individual proprietors and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "*employees*" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "*employees*" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. A policy issued to insure the employees of a public body may provide that the term "*employees*" shall include elected or appointed officials.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premiums is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five per cent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least twenty-five employees at the date of its issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

1953 (48) 493.

§ 37-303. Policies to creditors.

Such a policy may be issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "*debtors*" shall include the debtors of one or more subsidiary corporations and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, from charges collected from the insured debtors or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five per cent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly or may reasonably be expected to receive at least one hundred new entrants during the first policy year and then only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five per cent of the new entrants become insured.

(4) The amounts of insurance on the life of any debtor shall at no time exceed the amount of the original loan.

(5) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

1953 (48) 493; 1954 (48) 1539.

Effect of amendment.—The amendment second "amount" and adding "of the amended paragraph (4) by making first original loan." "amount" plural, striking out all after the

§ 37-304. Policies to labor unions.

Such a policy may be issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment, to membership in the union or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five per cent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed

by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least twenty-five members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

1953 (48) 493.

§ 37-305. Policies issued to fund of one or more employers in same industry, labor unions, etc.

Such a policy may be issued to (a) the trustees of a fund established in this State by two or more employers in the same industry, provided a majority of the employees to be insured by each employer are located within this State, or by one or more labor unions, or (b) the trustees of a fund established by one or more employers in the same industry and one or more labor unions or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) The persons eligible for insurance shall be (a) all of the employees of the employers, (b) all of the members of the unions or (c) all of any class or classes thereof determined by conditions pertaining to their employment, to membership in the unions or to both. The policy may provide that the term "*employees*" shall include retired employees and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "*employees*" shall include the trustees, their employees or both, if their duties are principally connected with such trusteeship.

(2) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, by the union or unions or by both or, except in the case of a policy issued to the trustees of a fund established wholly by two or more employers, partly from such funds and partly from funds contributed by the insured persons. No policy may be issued to the trustees of a fund established wholly by two or more employers on which any part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five per cent of the then eligible persons, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at date of issue at least one hundred persons and not less than an average of five persons, other than individual proprietors or partners, per employer unit. And if the fund is established by the members of an association of employers the policy may be issued only if (a) either (i) the participating employers constitute at date of issue at least sixty per cent of those employer members whose employees are not already covered for group life insurance or (ii) the total number of persons covered at date of issue exceeds six hundred and (b) the policy shall not require that, if a participating employer discontinues

membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers or unions.

1953 (48) 493.

Trustee of fund must be resident.—A bank located in this State may not participate in a group insurance plan by certain foreign insurance corporations under which

the policy is issued to a foreign bank as trustee for benefit of its correspondent banks. Atty. Gen. Op., July 27, 1954.

§ 37-306. Maximum amount of individual insurance under policy.

No such policy of group life insurance may be issued to an employer, to a labor union or to the trustee of a fund established in whole or in part by an employer or a labor union which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to the employer or employers of such person, to a labor union or labor unions of which such person is a member or to the trustees of a fund or funds established in whole or in part by such employer or employers or such labor union or labor unions exceeds twenty thousand dollars, unless one hundred fifty per cent of the annual compensation of such person from his employer or employers exceeds twenty thousand dollars in which event all such term insurance shall not exceed forty thousand dollars or one hundred fifty per cent of such annual compensation, whichever is the lesser.

1953 (48) 493.

§ 37-307. Provisions required in all policies.

No policy of group life insurance shall be delivered in this State unless it contains in substance the following provision or provisions which in the opinion of the Commissioner are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder;

(1) A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period;

(2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him;

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or his beneficiary;

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage;

(5) A provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used;

(6) A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the person insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding two hundred fifty dollars to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured;

(7) A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable and the rights and conditions set forth in paragraphs (8), (9) and (10) following;

(8) A provision that, if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made and the first premium paid to the insurer within thirty-one days after such termination, and *provided further that*,

(a) The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(b) The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination less, in the case of a person whose membership in the class or classes eligible for coverage terminates but who continues in employment in another class, the amount of any life insurance for which such person is or becomes eligible under any other group policy within thirty-one days after such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(c) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs and to his age attained on the effective date of the individual policy;

(9) A provision that, if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by paragraph (8) above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination and (b) two thousand dollars; and

(10) A provision that, if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with paragraph (8) or paragraph (9) above and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

But (a) the provisions of paragraphs (6) to (10) inclusive shall not apply to policies issued to a creditor, (b) the standard provisions required for individual life insurance policies shall not apply to group life insurance policies and (c) if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the Commissioner is or are equitable to the insured persons and to the policyholder. But nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies.

1953 (48) 493.

§ 37-308. Coverage of spouses and minor children by certain policies.

Any policy issued pursuant to §§ 37-302, 37-304 or 37-305 may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

(1) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union, or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least seventy-five per cent of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer or union and shall not exceed, with respect to any spouse or child, the amounts shown in the following schedule:

<i>Age of Family Member at Death</i>	<i>Maximum Amount of Insurance</i>
Under 6 months	\$ 100.00
6 months and under 2 years	200.00
2 years and under 3 years	400.00
3 years and under 4 years	600.00
4 years and under 5 years	800.00
5 years and over	1,000.00

(3) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy or death, the spouse shall be entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, providing application for the individual policy shall be made and the first premium paid to the insurer within

thirty-one days after such termination, subject to the requirements of sub-paragraphs (a), (b) and (c) of paragraph (8) of § 37-307. If the group policy terminates or is amended so as to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under paragraph (9) of § 37-307, the spouse shall also be entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

Notwithstanding paragraph (7) of § 37-307, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

1953 (48) 493.

§ 37-309. Effect of chapter on existing policies.

The provisions of this chapter shall not invalidate or otherwise affect any policy or contract of group life insurance legally in effect August 14 1953. Any policy or contract written on an employee-pay-all basis covering the same group that was covered on August 14 1953 and providing substantially the same benefits that were provided to the members of such group on such date may legally be underwritten by an insurer other than the insurer on the risk on such date.

1953 (48) 493.

§ 37-310. Applicability of chapter.

The provisions of this chapter shall not be construed so as to apply to any association limiting its membership to one hazardous occupation.

1953 (48) 493.

CHAPTER 9.

FRATERNAL BENEFIT ASSOCIATIONS.

Article 4.

General Regulations.

- Sec.
37-906. To whom benefits may be made payable.
37-907. Who may be admitted to membership; medical examinations.

Sec.

- 37-932. Contributions for death benefits.
37-933. Reserve for certificates.
37-934. Payments for expense fund; payment of contributions, designation or change of beneficiaries.
37-935. [Repealed.]
37-936. [Repealed.]
37-937. [Repealed.]

Article 5.

Benefits for Children.

- 37-931. When authorized.

ARTICLE 4.

General Regulations.

§ 37-906. To whom benefits may be made payable.

The payment of death benefits shall be made to the beneficiary designated by the insured if the beneficiary has an insurable interest in the life insured.

1947 (45) 322; 1948 (45) 1734; 1954 (48) 1477.

Effect of amendment.—The amendment eliminated beneficiary restrictions to above class.

§ 37-907. Who may be admitted to membership; medical examinations.

An association may admit to beneficial membership any person not less than sixteen nor more than sixty years of age, who has been examined by a competent physician and whose examination has been supervised and approved as provided

by the laws of the association or who has made a declaration of insurability acceptable to the society, which declaration shall be unimpeachable as evidence of insurability except upon proof of wilful misstatement; but a beneficial member of such society who shall apply for a certificate providing for disability benefits need not be required to pass an additional medical examination or make an additional declaration of insurability therefor.

Nothing herein contained shall prevent such association from accepting general or social members.

1947 (45) 322; 1953 (48) 218.

Effect of amendment.—The amendment rewrote the section.

ARTICLE 5.

Benefits for Children.

§ 37-931. When authorized.

Any fraternal benefit association authorized to do business in this State may provide in its constitution and bylaws, in addition to other benefits provided for therein, for the payment of death, endowment and annuity benefits upon the lives of children under twenty-one years of age at the time of application therefor, upon the application of some adult person, and may grant such withdrawal equities and nonforfeiture options, as its bylaws, rules or regulations may provide. Any such society may at its option organize and operate branches for such children, and membership in local lodges and initiations therein shall not be required of such children, nor shall they have any voice in the management of the society.

1947 (45) 322; 1954 (48) 1477.

Effect of amendment.—The amendment added endowment benefits, provided for payment of benefits to children under twenty-one at time of application in lieu

of certain dependent children, provided for withdrawal equities and nonforfeiture options and eliminated limitations on amounts of benefits.

§ 37-932. Contributions for death benefits.

The contributions to be made for death benefits under all juvenile certificates issued after December 31 1954 shall be based upon the Standard Industrial Mortality Table or the American Experience Table of Mortality with Craig's or Buttolph's Extension thereof, with interest assumption of not more than three and one-half per cent per annum, or the American Men Ultimate Table of Mortality with Bowerman's Extension thereof, and interest at three and one-half per cent per annum, or according to such mortality standards and interest assumptions as may be authorized for use by domestic life insurers.

1947 (45) 322; 1954 (48) 1477.

Effect of amendment.—The amendment eliminated former section providing for conditions of insurance on dependent chil-

dren and contributions therefor and added above death benefit contribution provisions.

§ 37-933. Reserve for certificates.

Every society issuing such benefit certificates shall maintain on all such certificates not less than the reserve required by the standard of mortality and interest adopted by the society for computing contributions.

1947 (45) 322; 1954 (48) 1477.

Effect of amendment.—The amendment eliminated former section providing for continuance of insurance on child when per-

son taking out policy ceases to be a member and added above provisions.

§ 37-934. Payments for expense fund; payment of contributions; designation or change of beneficiaries.

Every association issuing such benefit certificates may provide in its bylaws, rules or regulations, for payments on account of the association's expense or general fund, which payments may be mingled with the general fund of the association. Such association may provide for means of enforcing payment of contribu-

tions, designation of beneficiaries, and changing such designations, and in all other respects for the regulation, government and control of such certificates and all rights, obligations and liabilities incident thereto.

1947 (45) 322; 1954 (48) 1477.

Effect of amendment.—The amendment eliminated former section providing for reserve and use of contributions and added above provisions.

Editor's note: See § 37-954 as to payments for expense fund.

§ 37-935. Exchange for membership or other certificate.

Repealed by A. and J. R. 1954 (48) 1477.

§ 37-936. Reports; separation of assets.

Repealed by A. and J. R. 1954 (48) 1477.

§ 37-937. Payments for expense fund.

Repealed by A. and J. R. 1954 (48) 1477.

CHAPTER 14.

UNFAIR PRACTICES.

§ 37-1204. Unfair methods of competition or unfair and deceptive acts or practices prohibited.

Editor's Note.—"article" in line 2 should be "chapter".

§ 37-1223. Purpose of article.

Editor's Note.—"article" in section analysis line and line 1 of text should be "chapter".

Title 38.

Juries and Jurors in Circuit Courts.

Chap. 2. Drawing and Summoning Jurors, §§ 38-51 to 38-87.

3. Disqualification, Exemption and Excuse From Service As Jurors, § 38-104.

5. Service as Jurors and Compensation Therefor, § 38-308.

6. Grand Juries, § 38-408.

CHAPTER 2.

DRAWING AND SUMMONING JURORS.

Sec.
38-51.3. Same; special provision for Richland County.

38-61.1. Same; local exceptions as to number drawn.

38-61.2. Same; jurors summoned to second day of week in Fairfield and Newberry Counties.

Sec.
38-73.1. Same; exception in counties of 31-700 to 32,000.

38-87. Petit jurors for general sessions to serve for common pleas during same term.

§ 38-51. Jury commissioners.

Cited in *State v. Waitus*, 224 S. C. 12, 77 S. E. (2d) 256 (1953).

§ 38-51.3. Same; special provision for Richland County.

In *Richland County* when, at the time for preparing a jury list or at the time for drawing a jury, the clerk of the court of common pleas, the county auditor

or the county treasurer is unable to serve, whether because of a vacancy in the office, disqualification or any other cause, one or more of the following, as may be necessary, shall act as jury commissioners in lieu of their respective superiors: the deputy clerk of the court of common pleas, the deputy county auditor or the deputy county treasurer.

1952 (47) 2123.

§ 38-60. Names placed in "tales box."

Stated in *State v. Waitus*, 224 S. C. 12, 77 S. E. (2d) 256 (1953).

§ 38-61. Drawing of petit jurors.

Stated in *State v. Waitus*, 224 S. C. 12, 77 S. E. (2d) 256 (1953).

§ 38-61.1. Same; local exceptions as to number drawn.

Notwithstanding the provisions of § 38-61, in the counties of *Abbeville*, *Bamberg*, *Beaufort*, *Calhoun*, *Fairfield*, *Jasper* and *Marion* the jury commissioners shall draw only thirty-six petit jurors unless in their discretion a greater number is needed at the approaching term of court, in which event the jury commissioners shall draw forty petit jurors, and in *Anderson* County the jury commissioners shall draw only thirty-six petit jurors.

And in the counties of *Allendale*, *Cherokee*, *Chester*, *Clarendon*, *Dorchester*, *Edgefield*, *Georgetown*, *Hampton*, *Horry*, *Laurens*, *Lee*, *Lexington*, *Marlboro*, *McCormick*, *Newberry*, *Saluda*, *Union*, *Williamsburg* and *York*, the jury commissioners shall draw only thirty-six jurors.

1953 (48) 45, 185, 444.

§ 38-61.2. Same; jurors summoned to second day of week in *Fairfield* and *Newberry* Counties.

Notwithstanding § 38-61, the clerks of the courts of common pleas for *Fairfield* and *Newberry* Counties shall issue their venire facias for such petit jurors summoned to attend the court of general sessions for said counties requiring their attendance on the second day of the week for which they have been drawn.

1953 (48) 61, 195.

§ 38-72. How deficiency in jurors supplied.

Stated in *State v. Waitus*, 224 S. C. 12, 77 S. E. (2d) 256 (1953).

§ 38-73.1. Same; exception in counties of 31,700 to 32,000.

In each county in the State containing a population of more than thirty-one thousand seven hundred and less than thirty-two thousand, according to the latest official United States census, the drawing to fill deficiencies in the number of grand or petit jurors shall be from the jury box and not from the tales box.

1953 (48) 442.

§ 38-76. Calling alternate jurors in circuit courts.

This section is remedial and is intended to prevent mistrials in criminal cases of long duration where a juror dies or becomes so ill as to be unable to continue his duties. *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

It does not deprive an accused of his

rights under S. C. Const., Art. 5, § 22, which provides that the petit jury of the circuit courts shall consist of twelve men, all of whom must be agreed as to a verdict in order to render the same. *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

§ 38-87. Petit jurors for general sessions to serve for common pleas during same term.

In cases where the law provides for the opening and holding of the court of common pleas during the week in which a term of the court of general sessions is or may be held in any county, the jurors summoned to attend and serve in the

court of general sessions shall also attend and serve as jurors in any such court of common pleas.

1954 (48) 1445.

Effect of amendment.—Prior to the amendment general sessions jurors were required to serve as jurors for common pleas next ensuing.

CHAPTER 3.

DISQUALIFICATION, EXEMPTIONS AND EXCUSE FROM SERVICE AS JURORS.

Sec.	Sec.
38-104. Persons exempt from serving as jurors.	38-108.5. Same; when make request to be excused in York County.

§ 38-104. Persons exempt from serving as jurors.

No person shall be exempt from service as a juror in any court of this State, except officers of the United States, of this State or of a county or municipal corporation while in the actual discharge of their duties as such, ordained ministers of the Gospel, registered practicing optometrists, practicing physicians, surgeons, licensed druggists, licensed embalmers, apothecaries, pharmacists, women, practicing attorneys at law, men over sixty-five years of age, officers and employees of State mental health facilities and all persons in actual transportation service of any railroad in this State. Notaries public shall not be deemed and considered State officers and shall not be exempt under this section.

1942 Code § 629; 1932 Code § 629; Civ. P. '22 § 569; Civ. C. '12 § 4037; Civ. C. '02 § 2935; G. S. 2240; R. S. 2380; 1832 (8) 380; 1836 (8) 447; 1871 (14) 690; 1878 (14) 582; 1880 (17) 307; 1884 (18) 713; 1891 (20) 1124; 1896 (22) 19; 1899 (23) 44; 1902 (23) 1028; 1907 (25) 492; 1921 (32) 269, 278; 1923 (33) 95; 1925 (34) 31; 1941 (42) 96; 1952 (47) 2042.

Effect of amendment.—The amendment added officers and employees of State mental health facilities.

§ 38-108.5. Same; when make request to be excused in York County.

When jurors have been notified to appear on the second day of any regular term of court of general sessions for *York* County, any juror who intends to ask that he be excused from jury duty, shall appear before the court at twelve o'clock noon of the first day of the court and present his reasons therefor.

1954 (48) 1716.

CHAPTER 4.

OBJECTIONS AND CHALLENGES TO JURORS AND EMPANELLING OF JURIES.

§ 38-202. Jurors may be examined by court; if not indifferent, shall be set aside.

I. GENERAL CONSIDERATION.
Omission of voir dire is not error if not requested.—In accord with paragraph under this catchline in Code. See *State v. Orr*, ... S. C., 82 S. E. (2d) 523 (1954).

II. DISCRETION OF COURT.

A. In General.
Refusal of question as to connection with insurance companies not parties to action.—In action for damages resulting from automobile collision, trial judge did not abuse his discretion in refusing to interrogate jurors on voir dire as to whether or not any one of them was an employee, policyholder, stockholder, agent or in any manner connected with certain insurance companies, or had been influenced by advertisements of group of such companies dealing with jury verdicts. *Wood v. Eng-*

land, Westbrook Advance Sheets, No. 16911, filed Sept. 15, 1954.

Scope of juror's interrogation is in court's discretion.—Just where to draw line on questioning prospective juror with view to selecting jury free from bias and prejudice and yet not inject extraneous and prejudicial matter into case has been source of great concern to courts and no general rule apparently has been framed thereabout, but each case depends more or less on its own circumstances and existence of good faith on part of moving party, a matter largely within discretion of trial judge. *Wood v. England*, Westbrook Advance Sheets, No. 16911, filed Sept. 15, 1954.

Refusal to grant new trial on ground of kinship of juror.—The trial judge did not

abuse his discretion in refusing to grant a new trial upon ascertaining that a juror was related to one of the litigants within the sixth degree. *Smith v. Quattlebaum*, 223 S. C. 384, 76 S. E. (2d) 154 (1953).

B. On Appeal.

Section gives circuit judge exclusive power to determine indifference.—In accord with this catchline in Code. See *State v. Fuller, Westbrook Advance Sheets*, No. 16899, filed Aug. 4, 1954.

Unless conclusion of circuit court is without any evidence to support it.—In accord with this catchline in Code. See *State*

v. Fuller, Westbrook Advance Sheets, No. 16899, filed Aug. 4, 1954.

III. COMPETENCY OF JURORS.

There is no statute that disqualifies a juror by reason of relationship or kinship with any of the parties to an action. *Smith v. Quattlebaum*, 223 S. C. 384, 76 S. E. (2d) 154 (1953).

Nor is there a statute disqualifying a juror on account of his relationship to an attorney in the case, either by affinity or consanguinity, within any degree. *State v. Nicholson*, 221 S. C. 399, 70 S. E. (2d) 632 (1952).

CHAPTER 5.

SERVICE AS JURORS AND COMPENSATION THEREFOR.

Sec.

38-308. Compensation of jurors in circuit courts.

§ 38-303. Procedure when jury fail to agree.

Jury may indicate when time for deliberation has elapsed.

In accord with paragraph under this

catchline in Code. See *Rowland v. Harris*, 218 S. C. 42, 61 S. E. (2d) 397 (1950).

§ 38-304. Duties and service of alternative jurors.

Stated in *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

§ 38-308. Compensation of jurors in circuit courts.

(4) In the counties of *Allendale, Bamberg, Barnwell, Beaufort, Cherokee, Chester, Colleton, Dorchester, Fairfield, Jasper, Lexington, Oconee and Orangeburg*, three dollars; *provided*, that if any juror in *Chester* County is kept on duty after eleven o'clock at night he shall be paid for an additional day;

(5) In *Horry* County, five dollars; *provided* that petit jurors shall receive an additional five dollars per night when detained on jury duty after eleven o'clock P. M.

(6) In *Berkeley, Kershaw, Saluda, Spartanburg* and *Williamsburg* Counties, four dollars;

(8) In *Charleston, Chesterfield, Fairfield, Newberry, Pickens* and *Sumter* Counties, five dollars; *provided*, that if in either *Charleston, Newberry* or *Pickens* County any juror serving upon any case is detained by such jury service after twelve o'clock midnight, it shall be considered that the jury shall have entered into a new day of jury service; and *provided* further, that if a juror in either *Charleston* or *Newberry* County or in either such county is discharged from jury service before one o'clock p. m. on any day he shall only be paid one-half of the per diem herein set forth, to wit: the sum of two dollars and fifty cents; and *provided* further that jurors in *Chesterfield* County shall be paid mileage at seven cents per mile for each day's attendance on court.

1942 Code § 632; 1932 Code § 632; Civ. P. '22 § 572; Civ. C. '12 § 4040; Civ. C. '02 § 2938; G. S. 2269; R. S. 2384; 1874 (15) 608; 1878 (16) 630; 1907 (25) 518; 1911 (27) 86; 1920 (31) 735; 1925 (34) 233; 1933 (38) 8, 14, 76, 111; 1934 (38) 1598; 1935 (39) 220; 1936 (39) 1304, 1315, 1321, 1544; 1937 (40) 36, 45, 177, 190, 209, 385; 1938 (40) 1563, 1590, 1602, 1698; 1939 (41) 415; 1940 (41) 1938; 1942 (42) 1577; 1943 (43) 13; 1945 (44) 20, 44, 49, 77, 87; 1946 (44) 1356; 1947 (45) 1, 82; 1948 (45) 1722, 1830; 1949 (46) 110, 224; 1950 (46) 2391; 1951 (47) 39, 237; 1952 (47) 1914; 1953 (48) 184, 300; 1954 (48) 1749.

Effect of amendments.—The 1952 amendment changed the per diem in Sumter County from three dollars to five dollars.

The 1953 amendments changed the per diem in Saluda County from three dollars to four dollars and in Chesterfield County from three dollars to five dollars. The introductory paragraph and paragraphs (1),

(2), (3), (5), (7), (9) and (10) of the section were not affected by any of the amendments and are therefore not set forth above.

The 1954 amendment changed the per diem in Horry County, item (5) from three dollars to five dollars and added the proviso.

CHAPTER 6.

GRAND JURIES.

Sec.

38-408. Same; section or part thereof inapplicable in certain counties.

§ 38-401. Six grand jurors to be held for second year.

Stated in *State v. Waitus*, 224 S. C. 12, 77 S. E. (2d) 256 (1953).

§ 38-408. Same; section or part thereof inapplicable in certain counties.

The provisions of § 38-407 shall not apply to *Abbeville, Berkeley, Colleton, Greenwood, Hampton, Kershaw, Lee, Lexington, Newberry, Richland, Saluda* and *Sumter* Counties and the last sentence thereof shall not apply to *Anderson* County.

1942 Code § 977; 1932 Code § 977; Cr. P. '22 § 68; 1913 (28) 139; 1914 (28) 577; 1916 (29) 819; 1917 (30) 147; 1930 (36) 1183; 1933 (38) 565; 1935 (39) 193; 1936 (39) 1749; 1937 (40) 60; 1953 (48) 29.

Effect of amendment.—Pickens County was formerly included within the scope of the section.

Title 39.

Jurisdiction of State and United States.

CHAPTER 3.

SPECIFIC GRANTS OR CESSIONS OF JURISDICTION.

§ 39-101. Places ceded to the United States subject to concurrent jurisdiction.

Quoted in *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

Title 40.

Labor and Employment.

Chap. 2.1. Right To Work, §§ 40-46 to 40-46.11.

4. Payment of Wages, §§ 40-101 to 40-103.

CHAPTER 2.1.

RIGHT TO WORK.

Sec.

40-46. Denial of right to work for labor organization membership or non-membership against public policy.

40-46.1. Agreement of employer and labor

Sec.

organization denying non-members right to work or creating employment monopoly unlawful and a conspiracy.

40-46.2. Acts of employer relating to labor

Sec.

organization or payment of fees as condition of employment prohibited.

40-46.3. Labor organization contract not to violate § 40-46.1 or § 40-46.2.

40-46.4. Deduction of labor organization membership dues from wages.

40-46.5. Applicability of §§ 40-46.1, 40-46.2 and 40-46.4 to contracts.

40-46.6. Interference with right to work;

Sec.

compelling labor organization membership; picketing; etc., unlawful.

40-46.7. Appeal to court when rights adversely affected.

40-46.8. Same; relief court may grant.

40-46.9. Same; §§ 40-46.7 and 40-46.8 cumulative.

40-46.10. Penalties.

40-46.11. Invalidity.

§ 40-46. Denial of right to work for labor organization membership or non-membership against public policy.

It is hereby declared to be the public policy of this State that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization.

1954 (48) 1692.

§ 40-46.1. Agreement of employer and labor organization denying non-members right to work or creating employment monopoly unlawful and a conspiracy.

Any agreement or combination between any employer and any labor organization whereby persons not members of such labor organizations shall be denied the right to work for such employer or whereby such membership is made a condition of employment, or of continuance of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against public policy, unlawful and an illegal combination or conspiracy.

1954 (48) 1692.

It is the duty of the sheriff to prevent violation of this chapter. Atty. Gen. Op., Sept. 16, 1954.

§ 40-46.2. Acts of employer relating to labor organization or payment of fees as condition of employment prohibited.

It shall be unlawful for any employer to require any employee, as a condition of employment, or of continuance of employment,

(1) To be or become or remain a member or affiliate of any labor organization or agency;

(2) To abstain or refrain from membership in any labor organization;

(3) To pay any fees, dues, assessments or other charges or sums of money whatsoever to any person or organization.

1954 (48) 1692.

It is the duty of the sheriff to prevent violation of this chapter. Atty. Gen. Op., Sept. 16, 1954.

§ 40-46.3. Labor organization contract not to violate § 40-46.1 or § 40-46.2.

It shall be unlawful for any labor organization to enter into or seek to effect any agreement, contract or arrangement with any employer declared to be unlawful by § 40-46.1 or § 40-46.2.

1954 (48) 1692.

It is the duty of the sheriff to prevent violation of this chapter. Atty. Gen. Op., Sept. 16, 1954.

§ 40-46.4. Deduction of labor organization membership dues from wages.

Nothing in this chapter shall preclude any employer from deducting from the wages of the employees and paying over to any labor organization, or its authorized representative, membership dues in a labor organization if the employer has re-

ceived from each employee on whose account such deductions are made a written assignment which shall not be irrevocable for a period of more than one year or beyond the termination date of any applicable collective agreement or assignment, whichever occurs sooner.

1954 (48) 1692.

§ 40-46.5. Applicability of §§ 40-46.1, 40-46.2 and 40-46.4 to contracts.

The provisions of §§ 40-46.1, 40-46.2 and 40-46.4 shall not apply to any contract otherwise lawful in force and effect on March 19 1954, but they shall apply to all contracts thereafter concluded and to any renewal or extension of existing contracts.

1954 (48) 1692.

§ 40-46.6. Interference with right to work; compelling labor organization membership; picketing; etc., unlawful.

It shall be unlawful for any person, acting alone or in concert with one or more persons:

(1) By force, intimidation, violence or threats thereof, or violent or insulting language, directed against the person or property, or any member of the family of any person (a) to interfere, or attempt to interfere, with such person in the exercise of his right to work, to pursue or engage in any lawful vocation or business activity, to enter or leave any place of his employment or to receive, ship or deliver materials, goods or services not prohibited by law, or (b) to compel or attempt to compel any person to join, support or refrain from joining or supporting any labor organization, or

(2) To engage in picketing by force, violence or in such number or manner as to obstruct, interfere, or constitute a threat to obstruct or interfere with (a) free ingress to, and egress from, any place of employment or (b) free use of roads, streets, highways, sidewalks, railways or other public ways of travel, transportation or conveyance.

Nothing in this section shall be construed so as to prohibit peaceful picketing permissible under the National Labor-Management Relations Act of 1947 and the Constitution of the United States.

1954 (48) 1692.

It is the duty of the sheriff to prevent violation of this chapter. Atty. Gen. Op., Sept. 16, 1954.

§ 40-46.7. Appeal to court when rights adversely affected.

Any person whose rights are adversely affected by any contract, agreement, assemblage or other act or thing done or threatened to be done and declared to be unlawful or prohibited by this chapter may apply to any court having general equity jurisdiction for appropriate relief.

1954 (48) 1692.

§ 40-46.8. Same; relief court may grant.

The court, in any such proceeding, may grant and issue such restraining, and other, orders as may be appropriate, including an injunction restraining and enjoining the performance, continuance, maintenance or commission of any such contract, agreement, assemblage, act or thing, and may determine and award, as justice may require, any actual damages, costs and attorneys' fees which have been sustained or incurred by any party to the action, and, in the discretion of the court or jury, punitive damages in addition to the actual damages.

1954 (48) 1692.

§ 40-46.9. Same; §§ 40-46.7 and 40-46.8 cumulative.

The provisions of §§ 40-46.7 and 40-46.8 are cumulative and are in addition to all other remedies provided by law.

1954 (48) 1692.

§ 40-46.10. Penalties.

Any employer, labor organization or other person whomsoever who shall violate any provision of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by imprisonment for not less than ten nor more than thirty days or by a fine of not less than ten nor more than one thousand dollars or by both in the discretion of the court.

1954 (48) 1692.

§ 40-46.11. Invalidity.

If any section, provision or part of this chapter shall be adjudged invalid or unconstitutional, such judgment shall not affect, invalidate or impair the remaining sections or provisions hereof.

1954 (48) 1692.

CHAPTER 4.

PAYMENT OF WAGES.

**Article 1.
General Provisions.**

Sec.
40-103. Employees priority for wages in
bankruptcy or receivership.

Sec.
40-101.1. When assignment of wages by
employee binding on employers.

ARTICLE 1.

General Provisions.

§ 40-101.1. When assignment of wages by employee binding on employer.

The assignment of any wages or salary or any part thereof by any employee shall not operate so as to bind the employer without the written consent or acknowledgment of the employer.

1954 (48) 1505.

§ 40-103. Employee's priority for wages in bankruptcy or receivership.

When any employer goes into bankruptcy or receivership, the employees of such employer shall have a prior claim for their wages as is provided for under the provision of the Federal Bankruptcy Law. This priority shall extend to a maximum of three hundred dollars per employee in wages which must have been earned within three months prior to such employer going into bankruptcy or receivership. But no officer or director in the case of a corporation, no partner in the case of a partnership and no owner in the case of a sole proprietorship may avail themselves of the provisions of this section.

1954 (48) 1744.

Title 41.

Landlord and Tenant.

CHAPTER 1.

GENERAL PROVISIONS.

§ 41-5. Concurrent jurisdiction of judges with magistrates.

Applied in *Baldwin v. Baldwin*, 224 S. C. 429, 79 S. E. (2d) 459 (1954).

CHAPTER 3.

EJECTMENT OF TENANTS.

§ 41-101. When tenant may be ejected.

Applied in *Baldwin v. Baldwin*, 224 S. C. 429, 79 S. E. (2d) 459 (1954).

§ 41-102. Ejectment proceeding instituted by rule.

Jurisdiction of magistrate is dependent on existence of relation, etc.

If it should be properly determined by the judge, sitting as a magistrate, that the landlord-tenant relation does not exist between plaintiff and defendant, he should dismiss the rule, and his jurisdiction, so far as this summary proceeding of ejectment is concerned, will be at an end. *Baldwin v. Baldwin*, 224 S. C. 429, 79 S. E. (2d) 459 (1954).

Plaintiff entitled to opportunity to offer evidence of relationship. — In a proceed-

ing under this chapter, the county judge erred in issuing an order in which he found as a matter of fact that the relationship of landlord and tenant did not exist, and ordered a jury trial to determine the sole question of the defendant's title to the property by parol gift and by adverse possession, without giving plaintiff opportunity to offer evidence to establish that the relationship of landlord and tenant existed between him and defendant. *Baldwin v. Baldwin*, 224 S. C. 429, 79 S. E. (2d) 459 (1954).

§ 41-104. Tenant ejected on failure to show cause.

This section clearly contemplates issuance of a written warrant, and there can be no valid verbal warrant of ejectment.

Thompson v. Rutland, ... S. C., 83 S. E. (2d) 163 (1954).

§ 41-106. Trial of issue.

Stated in *Baldwin v. Baldwin*, 224 S. C. 429, 79 S. E. (2d) 459 (1954).

CHAPTER 4.

COLLECTION OF RENT BY DISTRAINT.

§ 41-152. Property exempt from distress.

Cited in *Thompson v. Rutland*, ... S. C., 83 S. E. (2d) 163 (1954).

Title 42.

Libraries.

Chap. 7. Local Provisions, §§ 42-317 to 42-665.1.

CHAPTER 7.

LOCAL PROVISIONS.

Article 2A.

Barnwell County Library Board.

Sec. 42-317. Established, powers, duties, etc.

Article 5.

Colleton County.

42-360. Colleton County library commission.
42-361 to 42-364. [Repealed.]

Article 6.

Darlington County.

42-372. Darlington library district and commission.

Article 8.1.

Georgetown County Memorial Library.

Sec. 42-409. Establishment, board, etc.

Article 10.

Greenwood City and County Public Library.

42-448. Tax levy to defray expenses.

Article 11.

Horry County Memorial Library Commission.

42-462. Terms of office; vacancies.

Sec.
42-464.1. County history; historical sites;
gifts; clerical help.

Article 12.

Kershaw County Library Commission.
42-483. Same for colored Memorial Library
commission; library part of
county library.

Article 13.

Lancaster County Public Library.
42-500. County board of education to
operate.
42-501, 42-502. [Repealed.]

Sec.

Article 14.

Lee County Public Library Commission.
42-514. Annual meeting; election of officers;
budgets.

Article 17.

Oconee Public Library Commission.
42-562. Members.

Article 22.

York County.
42-665.1. Rock Hill City Library, territory,
trustees, tax levy.

ARTICLE 2A.

Barnwell County Library Board.

§ 42-317. Established, powers, duties, etc.

Provisions of A. & J. R. 1953 (48) 378 make up this section.

ARTICLE 5.

Colleton County.

§ 42-360. Colleton County library commission.

Provisions of A. & J. R. 1953 (48) 265 make up this section.

§§ 42-361 to 42-364. Colleton County rural library board.

Repealed by A. & J. R. 1953 (48) 265.

Cross reference.—See now § 42-360.

ARTICLE 6.

Darlington County.

§ 42-372. Darlington library district and commission.

Provisions of A. & J. R. 1953 (48) 457 make up this section.

ARTICLE 8.1.

Georgetown County Memorial Library.

§ 42-409. Establishment, board, etc.

Provisions of A. & J. R. 1953 (48) 153 make up this section.

ARTICLE 10.

Greenwood City and County Public Library.

§ 42-448. Tax levy to defray expenses.

Amended by A. & J. R. 1953 (48) 390.

ARTICLE 11.

Horry County Memorial Library Commission.

§ 42-462. Terms of office; vacancies.

Amended by A. & J. R. 1953 (48) 270.

§ 42-464.1. County history; historical sites; gifts; clerical help.

Provisions from A. & J. R. 1954 (48) 1758 make up this section.

ARTICLE 12.

*Kershaw County Library Commission.***§ 42-483. Same for Colored Memorial Library Commission; library part of county library.**

Amended by A. & J. R. 1954 (48) 1788.

ARTICLE 13.

*Lancaster County Public Library.***§ 42-500. County board of education to operate.**

Provisions from A. & J. R. 1952 (47) 2014 make up this section.

§§ 42-501, 42-502. Lancaster County Public Library.

Repealed by A. & J. R. 1952 (47) 2014.

Cross reference.—See now § 42-500.

ARTICLE 14.

*Lee County Public Library Commission.***§ 42-514. Annual meeting; election of officers; budgets.**

The commission shall hold an annual meeting in June of each year, at which time it shall elect a chairman, a secretary, an executive committee and such other officers and committees as it deems necessary, who shall hold office until the next annual meeting. The commission shall at its annual meeting estimate its prospective income for the ensuing fiscal year and adopt a budget calculated to operate the library during the next twelve months within the limits of the funds available.

1949 (46) 79; 1952 (47) 1708.

Effect of amendment.—The amendment changed the month of the annual meeting from February to June.

ARTICLE 17.

*Oconee Public Library Commission.***§ 42-562. Members.**

Amended by A. & J. R. 1953 (48) 14 and A. & J. R. 1954 (48) 1805.

ARTICLE 22.

*York County.***§ 42-665.1. Rock Hill City Library; territory, trustees, tax levy.**

Provisions of A. & J. R. 1953 (48) 251 make up this section.

Title 43.
Magistrates and Constables.

Chap. 1. Magistrates Generally, § 43-8.1.

3. Search Warrants, Arrest, Preliminary Examinations, Commitment and Bail, § 43-232.1.

5. Local Provisions, §§ 43-663 to 43-1050.

CHAPTER 1.

MAGISTRATES GENERALLY.

Sec.

43-8.1. Same; special provision for Camden in Kershaw County.

§ 43-8.1. **Same; special provision for Camden in Kershaw County.**
Provisions of A. & J. R. 1953 (48) 129 make up this section.

§ 43-9. **Books required and disposition thereof in case of death.**
Cited in *State v. Pearson*, 223 S. C. 377,
76 S. E. (2d) 151 (1953).

CHAPTER 2.

JURISDICTION AND PROCEDURE IN MAGISTRATES' COURTS.

ARTICLE 2.

Criminal Jurisdiction.

§ 43-68. **When jurisdiction exclusive and when concurrent.**

First offense of unlawful possession of intoxicating liquor.—The court of magistrate has exclusive jurisdiction of a trial for a first offense of unlawful possession of intoxicating liquor, for which the punishment is imprisonment for not more than thirty days or a fine of not more than \$100.00. *State v. Castleman*, 219 S. C. 136, 64 S. E. (2d) 250 (1951).

ARTICLE 4.

Procedure in Criminal Cases.

§ 43-111. **Proceedings to be by information.**

This section is applicable to prosecutions in municipal courts. *State v. Langford*, 223 S. C. 20, 73 S. E. (2d) 854 (1953).

It does not forbid any steps in the judicial process until an information under oath is filed. *State v. Langford*, 223 S. C. 20, 73 S. E. (2d) 854 (1953).

§ 43-113. **Proceedings summary.**

Jurisdiction of offense and of accused is indispensable.—Even though the proceedings in magistrates' courts lack many of the formalities required in a court of general sessions, jurisdiction of the offense

And there can be a valid forfeiture of bail where no warrant for the arrest of accused has been issued. *State v. Langford*, 223 S. C. 20, 73 S. E. (2d) 854 (1953).

charged and of the person of the accused is indispensable to a valid conviction. *State v. Langford*, 223 S. C. 20, 73 S. E. (2d) 854 (1953).

§ 43-201. **Issue of search warrant.**

Cross reference.—As to only bonded officers execute search warrant, § 53-2.1.

CHAPTER 3.

SEARCH WARRANTS, ARREST, PRELIMINARY EXAMINATIONS, COMMITMENT AND BAIL.

Article 3.

Preliminary Examinations.

Sec.

43-232.1. Same; when warrant issued by coroner.

ARTICLE 3.

Preliminary Examinations.

§ 43-232. **When and how defendant may demand preliminary examination.**
Cited in *Ex parte Orr*, 110 F. Supp. 153 (1952).

§ 43-232.1. Same; when warrant issued by coroner.

In instances in which a warrant charging a crime beyond the jurisdiction of a magistrate is issued by a coroner, a preliminary investigation as provided for herein shall be granted, upon demand of the defendant, by the magistrate having territorial jurisdiction.

1952 (47) 2171.

ARTICLE 4.

*Bail and Recognizance; Arrest and Committal of Witnesses.***§ 43-243. Accused may deposit money in lieu of recognizance.**

This section is applicable to charges preferred in municipal courts. State v. Langford, 223 S. C. 20, 73 S. E. (2d) 854 (1953).

CHAPTER 5.

LOCAL PROVISIONS.

Article 11.

Cherokee County.

Sec.
43-663. Receipts, reports, etc.

Article 12.

Chester County.

43-674. Territorial jurisdiction of magistrates.

Article 18.

Edgefield County.

43-751. Judicial Districts.

Article 23.

Greenville County.

43-802. Territorial jurisdiction.

Article 31.

Lexington County.

43-881. Districts.

Article 32.

Marion County.

43-891. Districts.
43-891.1. Qualification; election.
43-891.2. Reside in district.
43-891.3. Jurisdiction.
43-892. Magistrates, and constables, bonds.
43-892.1. Residence of constable.

Article 34.

McCormick County.

Sec.
43-911. Number and location of magistrates.

Article 35.

Newberry County.

43-921. Districts.
43-921.5. Jurisdiction.
43-921.6. Venue.

Article 39.

Richland County.

43-969. Killian district.
43-973. Upper Township district.
43-976. Jurisdiction of magistrates.

Article 41.

Spartanburg County.

43-1015.1. Fees of special constables for serving papers.
43-1017. Schedule of civil costs.
43-1018. Costs on fraudulent check collections.
43-1033. Special qualification of third district magistrate.
43-1038. Special civil jurisdiction of third district magistrate.
43-1038.1. Civil jurisdiction of third district magistrate.
43-1041 to 43-1050. [Repealed.]

ARTICLE 11.

*Cherokee County.***§ 43-663. Receipts, reports, etc.**

Provisions of A. & J. R. 1953 (48) 318 make up this section.

ARTICLE 12.

*Chester County.***§ 43-674. Territorial jurisdiction of magistrates.**

All cases triable before magistrates in *Chester* County shall be heard by the magistrate in the first magisterial district in the county composed of *Chester* and *Blackstock* Townships, the magistrate in the seventh magisterial district composed of *Rossville* and *Great Falls* townships or the magistrate in whose judicial

district the defendant lives except that cases involving attachment of motor vehicles may be tried in the judicial district where they originate. The provisions of this section shall in no wise affect the rights of any party to have any case transferred from one magistrate to another as provided by law.

1942 Code § 3760; 1939 (41) 473; 1952 (47) 2161.

Effect of amendment.—The amendment the first and seventh magisterial districts made the jurisdiction of the magistrates in county-wide.

ARTICLE 18.

Edgefield County.

§ 43-751. Judicial districts.

There shall be in *Edgefield* County six judicial districts as follows, to wit:

(1) The first district shall embrace those parts of *Wise* and *Pickens* townships not in the second district, and that portion of *Blocker* township east of the Dixie Highway and that portion of *Grey* township lying south of the line surveyed from *Greenwood* County, that portion of *Pine Grove* township remaining in *Edgefield* County and that part of *Pickens* township lying north of Little Turkey Creek and west of a straight line running from a point on said creek five hundred yards above the bridge, on the road between Capt. J. C. Brooks' and the estate of John Harris, in a northeasterly direction to the *Saluda* County line, at a point fifty yards north of Calvary Church;

(2) The second district shall embrace *Shaw* township and that portion of *Meriwether*, *Wise* and *Pickens* townships within the following limits, to wit: east of old State Road from Kendrick's by the Tillman place Mt. Vintage to Mays and then turn to the right, leaving the old Stage road and go to the Gary place, crossing the old Plank road between Walter Miller's and Barr place; thence around by the rock quarry to intersect the Weaver road at T. C. Smith's; thence to J. DeLoache's; thence leaving the Weaver Road, taking the road by Harmony Church; thence taking the public road by the residence of Walter Smith to Bouknight's; thence along the public road by the residence of Cole Berry, across Tiger Creek to Lucius Dabney's; thence to B. T. Boatwright's residence; thence by the public road to Neal's Gin; thence taking the Timmerman road to the *Aiken* line;

(3) The third district shall embrace those portions of *Johnston*, *Mobley* and *Ward* townships remaining in *Edgefield* County;

(4) The fourth district shall embrace *Gregg* and *Collier* townships, that portion of *Meriwether* township not embraced in the second district and that portion of *Washington* township remaining in *Edgefield* County;

(5) The fifth district shall embrace *Collins* township; and

(6) The sixth district shall embrace *Talbert*, *Moss* and that portion of *Blocker* township west of the Dixie Highway.

1942 Code § 3763; 1932 Code § 3763; 1925 (34) 702; 1954 (48) 1550.

Effect of amendment.—The amendment eliminated the seventh district and added area formerly therein to the first district.

ARTICLE 23.

Greenville County.

§ 43-802. Territorial jurisdiction.

The two magistrates located in *Greenville*, the magistrates in *Fountain Inn*, *Greer*, *Piedmont* and *West Greenville*, the magistrates in *Austin*, *Bates* and *Oaklawn* townships and the magistrate in *Taylor*, in *Chick Springs* township, shall have civil and criminal jurisdiction throughout the whole of *Greenville* County. The other magistrates shall have jurisdiction only in civil and criminal cases arising in their

respective townships. The jurisdiction of these latter magistrates shall be concurrent with that of the magistrates whose territorial jurisdiction is county-wide.

1942 Code § 3769; 1932 Code § 3769; 1929 (36) 854; 1935 (39) 30; 1937 (40) 486; 1938 (40) 1670; 1940 (41) 1894, 1919; 1948 (45) 1788; 1952 (47) 1873; 1954 (48) 1805.

Effect of amendments. — The 1952 amendment conferred county-wide jurisdiction on the magistrate in Taylor and omitted provisions as to concurrent jurisdiction of magistrates in townships where there is more than one magistrate and providing for exclusive jurisdiction of a cause when once a magistrate has acquired jurisdiction.

The 1954 amendment added Austin Township to first sentence.

ARTICLE 31.

Lexington County.

§ 43-881. Districts.

Amended by A. & J. R. 1953 (48) 49.

ARTICLE 32.

Marion County.

§ 43-891. Districts.

There shall be five magisterial districts in *Marion County* designated as follows:

(1) Magisterial district No. 1 which shall comprise *Marion, Wahee* and *Moody* townships, with one magistrate.

(2) Magisterial district No. 2 which shall comprise so much of *Reaves* township as lies southwest of the Little Pee Dee River, with one magistrate.

(3) Magisterial district No. 3 which shall comprise so much of *Reaves* township as lies northeast of the Little Pee Dee River, with one magistrate.

(4) Magisterial district No. 4 which shall comprise *Rowell* and *Legett* townships, with one magistrate.

(5) Magisterial district No. 5 which shall comprise *Britton's Neck* and *Woodberry* townships, with one magistrate.

1949 (46) 129; 1954 (48) 1439.

Effect of amendment. — Prior to the amendment five magistrates were authorized and provisions for salaries and certain constables made.

§ 43-891.1. Qualifications; election.

Each person seeking appointment as a magistrate in *Marion County* shall be a resident of the particular district wherein he is a candidate, shall qualify therefor under the rules prescribed by law and shall offer himself to the people of the particular magisterial district in which he desires to be appointed in the regular primary election to be held at the time prescribed in § 23-372. The results of the election shall be canvassed and published in the same manner as the results of other candidates in the primary.

(1) The magistrate of district No. 1 shall be voted on by the qualified electors of the voting precincts of North Marion, South Marion, Cedar Grove, Sellers, Temperance Hill and Todds.

(2) The magistrate of district No. 2 shall be voted on by the qualified electors of the voting precincts of East Mullins, West Mullins and Zion.

(3) The magistrate of district No. 3 shall be voted on by the qualified electors of the voting precinct of Nichols.

(4) The magistrate of district No. 4 shall be voted on by the qualified electors of the voting precincts of Rains, Centenary and Friendship.

(5) The magistrate of District No. 5 shall be voted on by the qualified electors of the voting precinct of Britton's Neck.
1954 (48) 1439.

§ 43-891.2. Reside in district.

Each magistrate shall reside in the particular district wherein he is magistrate during his term of office.
1954 (48) 1439.

§ 43-891.3. Jurisdiction.

The magistrates of *Marion* County shall have criminal and civil jurisdiction in their respective districts as defined in § 43-891 only; except when there has been a change of venue as provided by law.
1954 (48) 1439.

§ 43-892. Magistrates' and Constables' bonds.

Every magistrate and magistrate's constable in *Marion* County shall enter into a bond payable to the county in the sum of five hundred dollars each, except the magistrates of magisterial districts No. 1 and 2 who shall enter into a bond in the sum of one thousand dollars each, conditioned for the faithful performance of their obligations and duties. The form and sufficiency of the bonds entered into by the magistrates and magistrates' constables shall be approved by the clerk of court of the county and the premiums on such bonds shall be paid by the county. Any commission issued to any magistrate or magistrate's constable in the county shall be void and of no effect until the magistrate or constable shall have entered into the bond required.

1942 Code § 3774; 1932 Code § 3774, 3775; 1924 (33) 1766; 1929 (36) 75; 1933 (38) 61; 1935 (39) 155; 1938 (40) 1745; 1954 (48) 1496.

Effect of amendment.—The amendment substituted "magisterial districts No. 1 and No. 2" for "Marion and Mullins".

§ 43-892.1. Residence of Constable.

Each magistrate's constable shall be a resident of the magisterial district in which appointed and shall reside therein during his term of office.
1954 (48) 1439.

ARTICLE 34.

McCormick County.

§ 43-911. Number and location of magistrates.

Amended by A. & J. R. 1953 (48) 235.

ARTICLE 35.

Newberry County.

§ 43-921. Districts.

Newberry County is divided into six magisterial districts to be designated and comprised as follows:

- (1) Magisterial district No. 1 shall consist of Whitmire tax district No. 4;
- (2) Magisterial district No. 2 shall consist of Newberry tax district No. 1 and Bush River tax district No. 3;
- (3) Magisterial district No. 3 shall consist of Prosperity tax district No. 7 and the Macedonia Section which was annexed to *Newberry* County;
- (4) Magisterial district No. 4 shall consist of Pomaria tax district No. 5;
- (5) Magisterial district No. 5 shall consist of Silverstreet tax district No. 2; and
- (6) Magisterial district No. 6 shall consist of Little Mountain tax district No. 6.

1942 Code § 3777; 1935 (39) 89, 222; 1936 (39) 1673; 1938 (40) 1616; 1954 (48) 1698.
Effect of amendment.—Formerly there were five districts.

§ 43-921.5. Jurisdiction.

In all criminal cases, magistrates in *Newberry* County shall have jurisdiction only of offenses committed within their respective territorial limits, *provided*, however, that for the purposes of issuing warrants and holding preliminary hearings in criminal cases they shall have jurisdiction throughout the county; *provided*, further, that if the magistrate properly having jurisdiction properly disqualifies himself, the case shall be tried by an adjoining magistrate.

1954 (48) 1698.

§ 43-921.6. Venue.

In all civil cases triable by magistrates in *Newberry* County, the action shall be brought and the case tried in the magisterial district in which the defendant resides. However, in any case, civil or criminal, within the jurisdiction of any magistrate, a change of venue may be granted as provided by law.

1954 (48) 1698.

ARTICLE 39.

*Richland County.***§ 43-969. Killian district.**

Amended by § 1 of A. & J. R. 1954 (48) 1558.

§ 43-973. Upper Township district.

Amended by § 1 of A. & J. R. 1954 (48) 1558.

§ 43-975. All boundaries go to correct Fort Jackson lines.

Editor's note.—Section number should be § 43-975 in lieu of § 93-975.

§ 43-976. Jurisdiction of Magistrates.

Amended by § 1 of A. & J. R. 1954 (48) 1558.

Editor's note.—The "hereinafter" on line two should be "hereinabove".

ARTICLE 41.

*Spartanburg County.***§ 43-1015.1. Fees of special constables for serving papers.**

Special constables shall receive the same costs and mileage for all papers served for the magistrates of the county as provided for in the schedule of civil costs set out in § 43-1017.

1954 (48) 1470.

§ 43-1017. Schedule of civil costs.

Amended by A. & J. R. 1953 (48) 349.

§ 43-1018. Costs on fraudulent check collections.

Amended by A. & J. R. 1953 (48) 349.

§ 43-1033. Special qualification of third district magistrate.

Repealed by A. & J. R. 1954 (48) 1556.

§ 43-1038. Special civil jurisdiction of third district magistrate.

Repealed by A. & J. R. 1954 (48) 1556.

Cross reference.—See now § 43-1038.1.

§ 43-1038.1. Civil jurisdiction of third district magistrate.
The civil jurisdiction of the magistrate for the third magisterial district in *Sumter* County shall be the same as the other magistrates in *Sumter* County.
1954 (48) 1556.

Editor's note.—Section 21, Art. 5, State Constitution, should be consulted in connection with this section.

§§ 43-1041 to 43-1050. Change of venue in third district; no effect on circuit court duty.
Repealed by A. & J. R. 1954 (48) 1556.

Title 44.

Military, Civil Defense and Veterans Affairs.

- Chap. 1. The Military Code, §§ 44-22 to 44-142.
5. Temporary or Emergency War Measures, §§ 44-415, 44-416.
7. Confederate Pensions, § 44-557.
9. Other Provisions For Benefit of Veterans, §§ 44-656, 44-661.
11. Confederate Home, § 44-757.
13. Chesterfield County War Memorial Commissions, §§ 44-851, 44-852.

CHAPTER 1.

THE MILITARY CODE.

Article 2. Adjutant and Inspector General's Department	Article 7. Provisions Relating to Service.
Sec. 44-22. The Adjutant and Inspector General; election and term; chief of staff; salary.	Sec. 44-142. Leaves of absence for public employees attending encampments or on active duty.

ARTICLE 1.

General Provisions.

§ 44-6. Composition and classes of militia.

Cross reference.—For exemption of officers and employees of State mental health facilities from military duty, see § 32-906.

ARTICLE 2.

Adjutant and Inspector General's Department.

§ 44-22. The Adjutant and Inspector General; election and term; chief of staff; salary.

* * * His salary shall be ten thousand dollars per annum.
1948 (45) 1716; 1950 (46) 1881; 1954 (48) 1566.

Effect of amendment.—Amendment in section was otherwise unchanged; and is creased salary to ten thousand dollars from not reproduced here.
seven thousand five hundred dollars. The

ARTICLE 7.

Provisions Relating to Service.

§ 44-142. Leaves of absence for public employees attending encampments or on active duty.

Repealed by A. & J. R. 1954 (48) 1566.
Cross reference.—See now § 50-160.

CHAPTER 5.

TEMPORARY OR EMERGENCY WAR MEASURES.

Article 1.1.

**Compact with Other States for Mutual
Helpfulness in Civil Defense
Emergency.**

Sec.

44-415. Authorized.

44-416. Terms of compact.

ARTICLE 1.1.

Compact with Other States for Mutual Helpfulness in Civil Defense Emergency.

§ 44-415. Authorized.

The State of South Carolina by and through the Governor of the State may enter into a compact with any state of the Union for mutual helpfulness in meeting any civil defense emergency or disaster which may arise in this State or in a state with which South Carolina may enter into such a compact.

1952 (47) 1721.

§ 44-416. Terms of compact.

The compact authorized by § 44-415 shall be in form as hereinbelow set out with such modifications and restrictions as the Governor may deem necessary for the proper protection of the best interests of the State, to-wit:

**"INTERSTATE CIVIL DEFENSE DISASTER COMPACT BETWEEN THE STATES
OF AND SOUTH CAROLINA**

"The contracting States solemnly agree:

"Article 1. The purpose of this compact is to provide mutual aid between the states in meeting any emergency or disaster from enemy attack, including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other enemy weapons. The prompt, full and effective utilization of the resources of the respective states, including such resources as may be available from the United States Government or any other source, are essential to the safety, care and welfare of the people of the states in the event of enemy action, and any other resources, including personnel, equipment or supplies, shall be incorporated into a plan or plans of mutual aid to be developed between the civil defense agencies or similar bodies of the states that are parties to the compact. The Directors of Civil Defense of party states shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

"Article 2. It shall be the duty of each state to formulate civil defense plans and programs for application within the state. There shall be frequent consultation between the representatives of the states and with the United States Government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out the civil defense plans and programs the party states shall so far as possible provide and follow uniform standards, practices, and rules and regulations including:

"(a) Insignia, arm bands and any other distinctive articles to designate and distinguish the different civil defense services.

"(b) Blackouts and practice blackouts, air raid drills, mobilization of civil defense forces and other tests and exercises.

"(c) Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith.

“(d) The effective screening or extinguishing of all lights and lighting devices and appliances.

“(e) Shutting off water mains, gas mains, electric power connections and the suspension of all other utility services.

“(f) All materials or equipment used or to be used for civil defense purposes in order to assure that such materials, and equipment will be easily and freely interchangeable when used in or by any other party state.

“(g) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during and subsequent to drills or attacks.

“(h) The safety of public meetings or gatherings.

“(i) Mobile support units.

“Article 3. Any party state requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with its terms. The state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, privileges and immunities as if they were performing their duties in the state in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

“Article 4. Whenever any person holds a license, certificate or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving the skill in any party state to meet an emergency or disaster and the state shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered for the duration of the emergency or disaster only.

“Article 5. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in that connection.

“Article 6. Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that appropriate among other party states, this instrument contains elements of a broad base common to all states, and nothing herein shall preclude any state from entering into supplementary agreements with another state or states. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

“Article 7. Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

“Article 8. Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss

or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost incurred in connection with such requests. Any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan equipment or donate such services to the receiving party state without charge or cost, and any two or more party states may enter into supplementary agreements establishing a different allocation of costs as among these states. The United States Government may relieve the state receiving aid from any liability and reimburse the state supplying civil defense forces for the compensation paid to and the transportation, subsistence and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the state and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment or facilities so utilized or consumed.

“Article 9. Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out between representatives of the party states and the various local civil defense areas. Such plans shall include the manner of transporting evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. The plans shall provide that the party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. The expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States Government under plans approved by it. After the termination of the emergency or disaster the party state of which the evacuees are residents shall assume the responsibility for the ultimate support or repatriation of such evacuees.

“Article 10. The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States Government to act as an informational and coordinating body under this compact, and representatives of the agency of the United States Government may attend meetings of the committee.

“Article 11. This compact shall become operative between the State of _____ and the State of South Carolina immediately upon its being entered into by the duly authorized officials of such states, and shall be subject to approval by Congress unless prior Congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Civil Defense Agency and other appropriate agencies of the United States Government.

“Article 12. This compact shall continue in force and remain binding on each party state until the legislature or the Governor of the party state takes action to withdraw therefrom. Such action shall not be effective until thirty days after notice has been sent by the Governor of the party state desiring to withdraw to the Governor of the other party state.

“Article 13. The term “*state*” shall include any territory or possession of the United States, the District of Columbia, and any neighboring foreign country or province or state thereof.

“Article 14. This compact shall be construed to effectuate the purposes stated in Article 1. If any provision of this compact is declared unconstitutional, or the applicability to any person or circumstance is held invalid, the constitutionality

of the remainder of this compact and the applicability to other persons and circumstances shall not be affected

FOR THE STATE OF
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Date, 1952

ATTEST:
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Secretary of State
FOR THE STATE OF
SOUTH CAROLINA

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Date, 1952

ATTEST:
.....
Secretary of State"

1952 (47) 1721.

ARTICLE 2.

Air Raid Precautions.

§§ 44-421 to 44-428. Air raid precautions.

Editor's note. — As these sections, enacted originally in 1942, were to be "in effect only so long as a state of war exists between the United States and a foreign country" it would seem that they are now probably no longer in effect.

ARTICLE 3.

Special Emergency Health and Sanitation Areas.

§§ 44-441 to 44-446. Special emergency health and sanitation areas.

Editor's note. — As these sections, enacted originally in 1942, were to be "in effect only so long as a state of war exists" it would seem that they are now probably no longer in effect.

ARTICLE 4.

Fire Fighting.

§§ 44-451 to 44-455. Fire fighting.

Editor's note. — As these sections, enacted originally in 1942, were to "be in effect only so long as a state of war exists between the United States and any foreign country" it would seem that they are now probably no longer in effect.

ARTICLE 5.

Cooperation in Troop Movements.

§§ 44-461 to 44-463. Cooperation in troop movements.

Editor's note. — As these sections, enacted originally in 1942, were to "be in effect only so long as a state of war exists between the United States and a foreign country" it would seem that they are now probably no longer in effect.

§ 44-464. Exemption of servicemen from road and poll taxes.

Cross reference.—For other tax exemptions of servicemen and veterans, see §§ 44-655, 44-656, 65-1522, (10.1), 65-1583 et seq. and 65-1993.

ARTICLE 6.

*Miscellaneous Provisions.***§§ 44-471 to 44-473. Participation in evacuation programs; acceptance of equipment, etc., for war or defense from the United States; use of State vehicles in emergencies.**

Editor's note. — As these sections, enacted originally in 1942 or 1943, were to be "in effect only so long as a state of war exists between the United States and any foreign country" and, in the case of § 44-471, for ninety days thereafter, it would seem that they are now probably no longer in effect.

§ 44-475. Officers may take affidavits, probates of deeds, etc.

Editor's note. — As this section, originally enacted in 1943, was limited in effect to "the duration of World War II and for six months thereafter" it appears to be no longer in effect.

CHAPTER 7.

CONFEDERATE PENSIONS.

Sec.

44-557. Director of Archives Commission to furnish information.

§ 44-557. Director of Archives Commission to furnish information.

The Director of the Archives Commission shall, when requested, give full information as to the service in the Army or Navy of any soldier, sailor or militiaman as it appears on the Confederate rolls.

1942 Code § 4984; 1932 Code § 4984; 1929 (36) 176; 1954 (48) 1752.

Effect of amendment.—"Director of the archives commission" substituted for "secretary of the Historical commission of South Carolina".

CHAPTER 9.

OTHER PROVISIONS FOR BENEFIT OF VETERANS.

Sec.

44-656. Tax exemption of totally disabled veterans in Marlboro County.

44-660. [Repealed.]

Sec.

44-661. Certified copies of certain public records furnished without cost.

§ 44-655. Tax exemption of totally disabled veterans in Aiken County.

Cross reference.—For other tax exemptions of veterans or persons in the armed forces, see §§ 44-464, 44-656, 65-1522, (10.1), 65-1583 et seq. and 65-1993.

§ 44-656. Tax exemption of totally disabled veterans in Marlboro County.

Amended by A. & J. R. 1953 (48) 308.

Cross reference.—For other tax exemptions of veterans or persons in the armed forces, see §§ 44-464, 44-656, 65-1522, (10.1), 65-1583 et seq. and 65-1993.

§ 44-660. Certified copies of certain public records furnished without cost.

Repealed by A. & J. R. 1952 (47) 2146.

§ 44-661. Certified copies of certain public records furnished without cost.

Officers in charge of public records relating to births, deaths, marriages and divorces shall furnish without cost certified copies of such records upon request therefor accompanied by reliable information that they are required by the Federal Government in connection with the administration of (a) the Selective Service Act of 1948 as amended, (b) the Dependents Assistance Act of 1950 (PL No. 771, 81st Congress, approved September 8 1950) and all acts of Congress administered by the Veterans Administration.

1952 (47) 2146.

CHAPTER 11.
CONFEDERATE HOME.

Sec.
44-757. [Repealed.]

§ 44-757. Purchase of supplies for home.
Repealed by A. & J. R. 1952 (47) 2042.

CHAPTER 13.
CHESTERFIELD COUNTY WAR MEMORIAL COMMISSIONS.

Sec. 44-851. World War II Memorial Commission.	Sec. 44-852. The Chesterfield County War Memorial Commission.
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§ 44-851. World War II Memorial Commission.
Editor's note.—See as possibly affecting this section A. & J. R. 1953 (48) 7, codified as § 44-852.

§ 44-852. The Chesterfield County War Memorial Commission.
Provisions of A. & J. R. 1953 (48) 7 make up this section.

Title 45.
Mortgages and Other Liens.

CHAPTER 1.
General Provisions.

§ 45-1. Liens on real estate no force after twenty years.

II. APPLICATION OF SECTION. Right of mortgagee in possession to retain possession.—Even though the lien of the mortgage had expired perforce this section, the mortgagee in possession, who collected the rents and paid the taxes, has a right	to retain possession of the premises until her debt is paid, although an action on the debt or a suit to foreclose her mortgage is barred. Knight v. Hilton, 224 S. C. 452, 79 S. E. (2d) 871 (1954).
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CHAPTER 3.
PROVISIONS AFFECTING MORTGAGES, ETC., OF CHATTELS ONLY.

§ 45-164. Notices of sale of personal property upon default.
Applied in Sanders v. Home Finance Co., 224 S. C. 390, 79 S. E. (2d) 367 (1953).

CHAPTER 5.
MECHANICS LIENS.

§ 45-251. Persons furnishing labor and materials to have lien on buildings, etc.
See generally Austin-Griffith Inc. v. Goldberg, 224 S. C. 372, 79 S. E. (2d) 447 (1953).

§ 45-254. Notice to owner when contractor employed.
Applied in Andrews v. Home Reform Soc., 219 S. C. 62, 64 S. E. (2d) 17 (1951); Hughes v. Peel, 221 S. C. 307, 70 S. E. (2d) 353 (1952).

§ 45-259. Lien dissolved unless statement be recorded.

The statute does not require that it be shown that the labor and materials were furnished under one contract, or under contract with the same person. The only requirement of the law is that the account

be filed within ninety days after the lienor ceases to labor on or furnish labor or materials for such building or structure. *Hughes v. Peel*, 221 S. C. 307, 70 S. E. (2d) 353 (1952).

§ 45-261. Release of lien upon filing surety bond, etc.

Cited in *Stephenson Finance Co. v. Burgess*, ... S. C., 82 S. E. (2d) 512 (1954).

§ 45-264. Enforcement by petition to court of common pleas.

See generally *Austin-Griffith Inc. v. Goldberg*, 224 S. C. 372, 79 S. E. (2d) 447 (1953).

§ 45-273. Jury to try facts.

The finding of the jury under this section constitutes a final determination of the amount due as in a case at law, and is binding upon the court, and not subject to review or modification. *Stone & Clamp v. Holmes*, 217 S. C. 203, 60 S. E. (2d) 231

(1950), holding that the statement to the contrary in *Metz v. Critcher*, 83 S. C. 396, 65 S. E. 394 (1909), treated under this section in the original, was obiter dicta and not controlling.

§ 45-274. Claims not payable allowed with rebate of interest.

Under this section, it becomes the duty of the court to ascertain the correct amount due on the claims of creditors, and this may be done with or without a jury, as provided in § 45-273. But when a jury is demanded by either or both parties to

the proceeding, it is incumbent upon the court to grant a jury trial, and the court is not authorized to change or modify by its judgment the finding of the jury. *Stone & Clamp v. Holmes*, 217 S. C. 203, 60 S. E. (2d) 231 (1950).

CHAPTER 7.

FACTORS LIENS ON MERCHANDISE.

§ 45-402. Factors and commission merchants may take liens on merchandise to secure loans and advances.

Applied in *Meinhard, Greeff & Co. v. Edens*, 189 F. (2d) 792 (1951).

CHAPTER 10.

MISCELLANEOUS OTHER LIENS.

§ 45-551. Lien on motor vehicle for damages.

I. GENERAL CONSIDERATION.

Definitions in unrelated statutes not controlling as to meaning of "motor vehicles."

—The attachment statute does not contain a definition of "motor vehicle," and there is no statute in *pari materia* in this State, which contains a definition. It follows that the General Assembly's definition of "motor vehicle," "trailer," and "semi-trailer," in unrelated statutes is not controlling in the meaning of "motor vehicle" as employed in this section. *Fruehauf Trailer Co. v. South Carolina Elec., Co.*, 223 S. C. 320, 75 S. E. (2d) 688 (1953).

The term "motor vehicle" as used in this section must be interpreted to embrace all vehicles which are now motor drawn upon the highways, regardless of whether the particular vehicle was in existence at the time of the statutory enactment. *Fruehauf*

Trailer Co. v. South Carolina Elec., etc., Co., 223 S. C. 320, 75 S. E. (2d) 688 (1953).

A trailer being drawn by a truck-tractor on the highway and securely attached to the tractor is, together with the truck-tractor to which it is attached, a motor vehicle within the meaning of this section and is subject to attachment for damages done by the combination. *Fruehauf Trailer Co. v. South Carolina Elec., etc., Co.*, 223 S. C. 320, 75 S. E. (2d) 688 (1953).

Stated in *Continental Casualty Company v. Padgett*, 123 F. Supp. 847 (1954).

II. LIEN CREATED BY SECTION.

Lien on offending vehicle comes into existence and attaches to vehicle at moment injury inflicted. *Stephenson Finance Co. v. Burgess*, ... S. C., 82 S. E. (2d) 512 (1954).

There is vital distinction between liens

created by statute and liens created by attachment. Where lien not already in existence, purpose of attachment is to obtain security for a debt by securing lien on property, but when lien created by statute, attachment not necessary to create lien but merely to seize property and place in custody of law or court. *Stephenson Finance Co. v. Burgess*, ... S. C., 82 S. E. (2d) 512 (1954).

Bond for return of attached motor vehicle does not release lien.—When bond is filed for release of property upon which there is lien originating by attachment, bond is substituted for lien, but bond filed to release automobile attached pursuant to this section merely releases it from custody of law and not from lien, it being clear that property is not released from statutory lien by filing undertaking unless expressly permitted by statute, as in § 45-261. *Stephenson Finance Co. v. Burgess*, ... S. C., 82 S. E. (2d) 512 (1954).

Bond for return of attached motor vehicle does not release lien, which remains superior to mortgage lien.—In action under this section in which offending motor vehicle attached and owner filed undertaking for its release, and subsequently judgment obtained and vehicle seized by

sheriff for sale to satisfy judgment, in proceeding by mortgagee to enjoin sale, held that judgment properly satisfied from proceeds of sale of vehicle, judgment owner not being relegated only to bond as a substitute for the res. *Stephenson Finance Co. v. Burgess*, ... S. C., 82 S. E. (2d) 512 (1954).

III. NATURE OF CAUSE OF ACTION.

Action in rem is maintainable.

In accord with 1st paragraph under this catchline in Code. See *Corley v. One 1950 International Truck L-190*, etc., 109 F. Supp. 730 (1953).

The action is not one against any particular person or corporation, but is an action against an automobile. *Corley v. One 1950 International Truck L-190*, etc., 109 F. Supp. 730 (1953).

IV. VENUE.

A motor vehicle in an action under this section is not a citizen as contemplated in the federal removal statute, and such an action commenced in a State court cannot be removed to a federal court on the ground of diversity of citizenship. *Corley v. One 1950 International Truck L-190*, etc., 109 F. Supp. 730 (1953).

Title 46.

Motor Vehicles.

Chap. 1. Motor Vehicle Registration and Licensing Act, §§ 46-91 to 46-97.5.

1.1. Motor Vehicle Driver Training Schools, §§ 46-140 to 46-140.7.

2. Licenses To Drive Motor Vehicles, §§ 46-167 to 46-184.

3. The Uniform Act Regulating Traffic on the Highways, §§ 46-328.1 to 46-489.7.

3.1. Motor Vehicle Safety Responsibility Act, §§ 46-701 to 46-750.33.

4. Operation of Motor Vehicles on Beaches, §§ 46-752 to 46-759.

CHAPTER 1.

MOTOR VEHICLE REGISTRATION AND LICENSING ACT.

Article 6.

Dealer Licenses.

Sec.
46-91. Motor vehicle dealer license.
46-92. [Repealed.]
46-95. [Repealed.]

Sec.

46-97.1. Plates; terms.
46-97.2. Time apply for plates.
46-97.3. Plates non-transferrable; revocation.
46-97.4. Department keep records.
46-97.5. Article cumulative.

Article 6.1.

Special Motor Vehicle Plates for Amateur Radio Station Licensees.

46-97. Issuance authorized; fee.

ARTICLE 6.

Dealer Licenses.

§ 46-91. Motor vehicle dealer license.

Before engaging in the business of a motor vehicle dealer in this State every person shall first make application for a license to engage in such business to the

Department on such form or forms as may be prescribed by the Department, which shall contain the name of the owner of such business and the exact location thereof. Every dealer license issued hereunder shall expire on October 31st next following the date the license is issued. The fee for such license shall be five dollars. Every license issued hereunder shall cover the main place of business under the same name and ownership. Any motor vehicle dealer failing to secure license as required in this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined as herein specified.

1949 (46) 342; 1954 (48) 1760.

Effect of amendment.—The amendment reduced license to five dollars from twenty-five dollars and also reduced the coverage of the license.

§ 46-92. Bond required of dealer.

Repealed by A. & J. R. 1954 (48) 1760.

Bond does not cover loss to member of public through dealer's fraud. — Where motor vehicle dealer wrongfully sold automobile to plaintiff who suffered loss by reason of recovery from him by true owner, in construing relevant provisions of Act approved March 25, 1948, 45 Stat. 1729, (repealed by Act approved June 3, 1949, 46 Stat. 342), pertinent provisions of which are similar to those of this section, held that the condition of bond requiring

"lawful operation" of dealer's business simply referred to the requirements of the statute, the keeping of records, etc., and statute cannot be reasonably expanded in meaning to include indemnification of member of public for loss suffered by reason of fraud of dealer which was not a violation of terms of statute which required the bond. *Rogers v. U. S. Fidelity & Guaranty Co.*, ... S. C., 81 S. E. (2d) 896 (1954.)

§ 46-95. Dealer licenses in lieu of retail store licenses.

Repealed by A. & J. R. 1954 (48) 1760.

ARTICLE 6.1.

Special Motor Vehicle Plates for Amateur Radio Station Licensees.

§ 46-97. Issuance authorized; fee.

Resident owners of motor vehicles, who hold an unrevoked and unexpired official radio station license as issued by the Federal Communications Commission, shall, upon application accompanied by proof of ownership of such amateur radio station license and the annual payment of one dollar, be issued a special plate which may be attached to any motor vehicle registered in the name of such owner.

1954 (48) 1543.

§ 46-97.1. Plates; term.

The plates shall (a) be for annual periods from November first to October thirty-first, (b) have the same color combinations as the regular motor vehicle registration plates and (c) have inscribed thereon the official amateur radio call letters of the owner as assigned by the Federal Communications Commission.

1954 (48) 1543.

§ 46-97.2. Time apply for plates.

Applications shall not be considered unless received by the Department at least ninety days before the beginning of the license year.

1954 (48) 1543.

§ 46-97.3. Plates non-transferable; revocation.

The plates shall not be transferable and if the owner loses his official Federal Communications Commission license for any cause, the Department may revoke the registration of the plates and repossess them.

1954 (48) 1543.

§ 46-97.4. Department keep records.

The Department shall keep a record of all plates issued under this article showing in alphabetical order the name, address and call letters of the owner.

1954 (48) 1543.

§ 46-97.5. Article cumulative.

The provisions of this article shall not affect the registration and licensing of motor vehicles as required by Title 46 but shall be cumulative thereto.

1954 (48) 1543.

ARTICLE 8.*Enforcement Generally; Records and Reports.***§ 46-111. Department to administer and enforce provisions of chapter.**

Cross reference.—For rules and regulations promulgated under authority of this section, see Rules and Regulations, Highway, State Commission, in Volume 7.

CHAPTER 1.1.**MOTOR VEHICLE DRIVER TRAINING SCHOOLS.**

Sec.	Sec.
46-140. Minimum standards and conditions of operation.	46-140.4. Application for license; when deny.
46-140.1. Inspection and examination of schools.	46-140.5. Fee; term of license; use of receipts.
46-140.2. License required to charge individuals for training to operate motor vehicles.	46-140.6. Revocation or suspension of license.
46-140.3. Same; inapplicable to certain courses.	46-140.7. Penalties.

§ 46-140. Minimum standards and conditions of operation.

The State Highway Department may establish minimum standards for the operation of driver training schools authorized to be licensed under the provisions of this chapter and prescribe conditions of operation of such schools.

1954 (48) 1536.

Public liability insurance coverage for training vehicles.—In prescribing conditions of operation of driver training schools Highway Department may require that such a school adequately insure the public against damage which may result from operation of vehicles while being used for training purposes. Atty. Gen. Op., June 7, 1954. ,

§ 46-140.1. Inspection and examination of schools.

All activities and operations of driver training schools licensed under the provisions of this chapter shall at all times be subject to inspection or examination by authorized representatives of the Department.

1954 (48) 1536.

§ 46-140.2. License required to charge individuals for training to operate motor vehicles.

No person shall engage in the business of training or educating persons to drive or operate motor vehicles, or offer such training or education, for which a fee or charge is made, unless and until such person has obtained and holds a valid driver training school license therefor issued by the State Highway Department.

1954 (48) 1536.

§ 46-140.3. Same; inapplicable to certain courses.

Courses offered by public high schools, State institutions and duly accredited and approved colleges shall be exempt from registration and license under this chapter.

1954 (48) 1536.

§ 46-140.4. Application for license; when deny.

Applications for driver training school licenses shall be made to the Department on such forms as the Department may prescribe and all applicants shall furnish such information as may be required by the Department. Licenses shall be denied

any person failing to meet and maintain the minimum standards and conditions of operations established by the Department under § 46-140.

1954 (48) 1536.

§ 46-140.5. Fee; term of license; use of receipts.

The annual license fee for each such school shall be fifty dollars. All such licenses issued shall expire on June thirtieth of the license year of issue. The proceeds from the sale of licenses shall be placed in the State Highway Fund for the administration and enforcement of this chapter and for other highway purposes.

1954 (48) 1536.

§ 46-140.6. Revocation or suspension of license.

The Department may also revoke or suspend any license when the Department finds that the licensee has failed to maintain the required minimum standards or conditions of operations or in any way conducts the school inimical to the public interest or safety on the highways.

1954 (48) 1536.

§ 46-140.7. Penalties.

Any person violating any provisions of this chapter or driver training school license issued pursuant to this chapter shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days, or both for such violation.

1954 (48) 1536.

CHAPTER 2.

LICENSES TO DRIVE MOTOR VEHICLES.

Sec.

46-167. Beginner's permit.

46-173.1. Same; operating vehicle for hire without license in violation of § 58-511.

46-181. Unlawful for minor under fourteen to operate vehicle.

Sec.

46-182. Unlawful for parent, etc., to permit child or employee under fourteen to operate a vehicle.

46-184. Unlawful for owner to allow minor under fourteen to operate vehicle.

§ 46-167. Beginner's permit.

The Department shall, without charge or fee, issue to a minor who applies therefor a beginner's permit. The permit may be issued sixty days prior to the date of the minor's becoming eligible to obtain a driver's license. While having such permit in his immediate possession the minor shall be entitled to operate a motor vehicle upon the highways for a period of not exceeding sixty days when accompanied by a licensed driver who is occupying a seat beside the beginner. The Department may revoke any such beginner's permit for any cause satisfactory to the Department.

1949 (46) 271; 1953 (48) 246.

Effect of amendment.—Formerly a beginner's permit was issued only to an applicant over 14 years of age and its issuance was in the discretion of the Department and was not mandatory.

§ 46-173.1. Same; operating vehicle for hire without license in violation of § 58-511.

In addition to the grounds for suspension or revocation of license set forth elsewhere in this chapter and in chapter 3 of this Title the Department shall forthwith revoke the license of any person for a period of six months upon receiving satisfactory evidence of the conviction, of the entry of a plea of guilty and sentence thereon or the forfeiture of bail of any such person found guilty of operating a vehicle for hire without a license in violation of § 58-1511.

1954 (48) 1791.

§ 46-181. Unlawful for minor under fourteen to operate vehicle.

Editor's note.—See § 46-167 as amended. The amendment impliedly amends § 46-181.

Stated in Bolt v. Gibson, Westbrook Advance Sheets, No. 16900, filed Aug. 5, 1954.

§ 46-182. Unlawful for parent, etc., to permit child or employee under fourteen to operate a vehicle.

Editor's note.—See § 46-167 as amended.
The amendment impliedly amends § 46-182.

§ 46-184. Unlawful for owner to allow minor under fourteen to operate vehicle.

Editor's note.—See § 46-167 as amended.
The amendment impliedly amends § 46-184.

CHAPTER 3.

THE UNIFORM ACT REGULATING TRAFFIC ON THE HIGHWAYS.

Article 4. Accidents.

Sec.
46-328.1. Reports not to be used as evidence.

Article 5.

Reckless Homicide, Reckless Driving, Driving While Drunk, etc.

46-343. Narcotic users and persons under influence of liquors, narcotic drugs etc., not to drive.
46-347.1. Reports prima facie evidence; stipulation of second offense and effect thereof.

Article 8.

Starting and Turning and Signals on Stopping and Turning.

46-404. Turning on curve or crest of grade prohibited.

Article 13.

Stopping, Standing and Parking.

Sec.
46-487. [Repealed.]

Article 13.1.

Property Abandoned on Highways.

Sec.
46-489. When property considered abandoned.
46-489.1. Police officers to remove such property.
46-489.2. Notice of seizure of such property.
46-489.3. Notice of proposed sale.
46-489.4. Reclamation of property before sale.
46-489.5. Lien for towing charges.
46-489.6. Sale and disposition of proceeds.
46-489.7. Payment of claims of owner, lien holders, etc.

ARTICLE 1.

Words and Phrases Defined.

SUBDIVISION II.

Governmental Agencies, Pedestrians, Owners, etc.

§ 46-243. Pedestrian.

Applied in *Greene v. Miller*, 114 F. Supp. 150 (1953).

SUBDIVISION III

Highway, Restricted Districts, Zones, etc.

§ 46-257. Intersection.

Joinder of an unimproved public road maintained by county with a state highway constitutes an intersection within the

meaning of this section. *Reese v. National Surety Corp.*, 224 S. C. 489, 80 S. E. (2d) 47 (1954).

ARTICLE 3.

Traffic Signs, Signals and Markings.

§ 46-306. Meaning of traffic-control signals.

Cited in *Durant v. Stuckey*, 221 S. C. 342, 70 S. E. (2d) 473 (1952).

ARTICLE 4.

*Accidents.***§ 46-328.1. Reports not to be used as evidence.**

None of the reports required by §§ 46-326 to 46-328 shall be referred to in any way or be any evidence of the negligence or due care of either party at the trial of any action at law to recover damages.

1952 (47) 1853.

ARTICLE 5.

*Reckless Homicide, Reckless Driving, Driving while Drunk, etc.***§ 46-341. Reckless homicide penalties.**

This section does not supersede common-law offense of involuntary manslaughter.—This section was not designed as a substitute for, and has not the effect of superseding, the common-law offense of involuntary manslaughter in cases of death resulting from the operation of a motor vehicle. *State v. Barnett*, 218 S. C. 415, 63 S. E. (2d) 57 (1951).

And solicitor may prosecute for either offense. — In automobile homicide cases not involving the elements of murder, the solicitor may prosecute the accused for reckless homicide under this section, in which event the State must show recklessness, or he may seek a conviction for involuntary manslaughter, in which event

the State is only required to show simple negligence. *State v. Barnett*, 218 S. C. 415, 63 S. E. (2d) 57 (1951).

Greater degree of negligence required to support conviction under this section. — This section means something more than the mere failure to exercise due care, and the offense denotes operation of a vehicle under such circumstances, and in such manner, as to show a willful or reckless disregard of consequences. This is a greater degree of negligence than is necessary to support the common-law offense of involuntary manslaughter where a dangerous instrumentality is involved. *State v. Barnett*, 218 S. C. 415, 63 S. E. (2d) 57 (1951).

§ 46-342. Reckless driving.

Applied in *Greene v. Miller*, 114 F. Supp. 150 (1953).

§ 46-343. Narcotic users and persons under influence of liquors, narcotic drugs, etc., not to drive.

It is unlawful for any person who is a habitual user of narcotic drugs or any person who is under the influence of intoxicating liquors, narcotic drugs, barbiturates, paraldehydes or drugs, herbs or any other substance of like character, whether synthetic or natural, to drive any vehicle within this State.

1949 (46) 466; 1954 (48) 1782.

Effect of amendment.—The amendment added, "barbiturates, paraldehydes or drugs, herbs or any other substance of like character, whether synthetic or natural,".

Applied in *State v. McAbee*, 220 S. C. 272, 67 S. E. (2d) 417 (1951); *State v.*

Mitchell, 220 S. C. 433, 68 S. E. (2d) 350 (1951); *State v. Ramey*, 221 S. C. 10, 68 S. E. (2d) 634 (1952); *State v. Langford*, 223 S. C. 20, 73 S. E. (2d) 854 (1953); *State v. Pearson*, 223 S. C. 377, 76 S. E. (2d) 151 (1953).

§ 46-345. Punishment.

An allegation in an indictment for violation of § 46-343 that the offense is not a first offense is not subject to quash upon the ground that the allegation was prejudicial in that it put defendant's character in issue. *State v. Ramey*, 221 S. C. 10, 68 S. E. (2d) 634 (1952).

Such allegation is necessary to show jurisdiction of general sessions court.—The court of general sessions is without jurisdiction of a prosecution for a first violation of § 46-343 because of the punishment which is prescribed. Therefore the allegation of the indictment that the crime charged is a second offense is necessary

to show the jurisdiction of the court of general sessions. *State v. Mitchell*, 220 S. C. 433, 68 S. E. (2d) 350 (1951).

Conviction as second offender not a prerequisite to conviction as third offender. — This section does not require that a defendant shall be convicted and sentenced as a second offender before he can be sentenced as a third offender. It merely requires that there should be two previous convictions. Thus a defendant may be sentenced as a third offender under this section although his second conviction was before a magistrate and he was only tried in that court as a first offender. *State v. Mc-*

Abee, 220 S. C. 272, 67 S. E. (2d) 417 (1951).

Offenses committed before enactment of section.—Conviction as a third offender under this section is proper although both prior offenses were committed prior to

the enactment of the 1949 act from which this section was codified. *State v. Patterson*, 220 S. C. 269, 66 S. E. (2d) 875 (1951).

Applied in *State v. Langford*, 223 S. C. 20, 73 S. E. (2d) 854 (1953); *State v. Pearson*, 223 S. C. 377, 76 S. E. (2d) 151 (1953).

§ 46-346. Plea of guilty or forfeiture of bail same as conviction.

There may be a valid forfeiture of bail even though no warrant was ever issued, where circumstances show that defendant

waived any right to have a warrant issued and served upon him. *State v. Langford*, 223 S. C. 20, 73 S. E. (2d) 854 (1953).

§ 46-347. Reports of convictions to Department.

Purpose of section.—It is manifest that the purpose of this section was to establish a central depository for the records of all persons convicted in this State for the violation of any statute or ordinance prohibiting the driving of any motor vehicle while under the influence of intoxicating liquor. *State v. Pearson*, 223 S. C. 377, 76 S. E. (2d) 151 (1953).

Magistrate's report or copy thereof admissible in evidence.—On the trial of a person charged as a second offender for operating a motor vehicle while under the influence of intoxicating liquor, a report by a magistrate to the Highway Department,

made pursuant to this section and duly identified by the custodian of the records, is admissible in evidence for the purpose of showing a prior conviction. *State v. Pearson*, 223 S. C. 377, 76 S. E. (2d) 151 (1953).

Not only is the original of a report made under this section admissible, but a certified copy or a certified photostatic copy of such report is also admissible under § 26-101. *State v. Pearson*, 223 S. C. 377, 76 S. E. (2d) 151 (1953).

Applied in *Parker v. South Carolina State Highway Dept.*, 224 S. C. 263, 78 S. E. (2d) 382 (1953).

§ 46-347.1. Reports prima facie evidence; stipulation of second offense and effect thereof.

In all trials and proceedings in any court of this State wherein the defendant is charged with violation of §§ 46-342 or 46-343, which forbid the operation of a vehicle in a reckless manner or by one while under the influence of intoxicants, drugs or narcotics, photostatic or other copies of the reports required to be filed with the Motor Vehicle Division of the Department by § 46-347, when such copies are duly certified by the Director of the Motor Vehicle Division as true copies of the original on file therewith, shall be deemed prima facie evidence of the information contained in such reports, for the purpose of showing any previous conviction, plea of guilty or nolo contendere or forfeiture of bond of or by the defendant in any other court. But the accused may stipulate with the solicitor that the charge constitutes a second or further offense, in which event the indictment shall not contain allegations of prior offenses nor shall evidence of the same be introduced.

1953 (48) 222.

Cited in *State v. Pearson*, 223 S. C. 377, 76 S. E. (2d) 151 (1953).

§ 46-348. Suspension of guilty driver's license.

Suspension is mandatory. — Upon receipt of the report required by § 46-347, it is mandatory upon the Department to suspend the license of the person so convicted. No discretion is allowed in the matter. *Parker v. South Carolina State Highway Dept.* (S. C.), 78 S. E. (2d) 382 (1953).

And holder of license is not entitled to notice.—There is no requirement that notice be given to the holder of the license. The suspension follow as a consequence and effect of committing the offense. It is a forfeiture of the privilege to drive, due to the failure of the licensee to observe

certain conditions under which the license was issued. *Parker v. South Carolina State Highway Dept.* 224 S. C. 263, 78 S. E. (2d) 382 (1953).

Suspension is civil, not criminal in nature.—The suspension constitutes no part of the punishment fixed by the court, nor is it an added punishment for the offense committed. It is civil and not criminal in its nature. It is not to punish the offender but to remove from the highways an operator who is a potential danger to others thereon. *Parker v. South Carolina Highway Dept.*, 224 S. C. 263, 78 S. E. (2d) 382 (1953).

And is not stayed by notice of appeal.—Since the suspension of the license constitutes no part of the punishment for the offense, it follows that § 7-6, providing that notice of appeal in a criminal case “shall operate as a stay of the execution of the sentence until the appeal is finally disposed of”, has no application. *Parker v. South Carolina State Highway Dept.*, 224 S. C. 263, 78 S. E. (2d) 382 (1953).

The word “convicted” as used in this

section contemplates only a verdict of guilty and sentence thereon, and was not intended to preclude the suspension of the license of the person so convicted until the determination of his appeal and an end of the prosecution. *Parker v. South Carolina State Highway Dept.*, 224 S. C. 263, 78 S. E. (2d) 382 (1953).

Stated in *State v. Langford*, 223 S. C. 20, 73 S. E. (2d) 854 (1953); *State v. Pearson*, 223 S. C. 377, 76 S. E. (2d) 151 (1953).

§ 46-350. Publication of names of suspended drivers.

Stated in *State v. Pearson*, 223 S. C. 377, 76 S. E. (2d) 151 (1953).

ARTICLE 6.

Speed Restrictions.

§ 46-361. General rule.

Excessive speed under conditions.—Assuming that operator of bus was negligent in stopping on highway, only reasonable conclusion from evidence was that plaintiff's intestate was negligent in failing to keep proper lookout and in driving car at speed excessive in circumstances, and such negligence was concurring and proximate cause of collision. *Phillips v. Davis*, ----- S. C. -----, 82 S. E. (2d) 515 (1954).

Applied in *Chapman v. Associated*

Transport, Inc., 218 S. C. 554, 63 S. E. (2d) 465 (1951); *Dawson v. South Carolina Power Co.*, 220 S. C. 26, 66 S. E. (2d) 322 (1951); *Wall v. Parker*, 223 S. C. 79, 74 S. E. (2d) 418 (1953); *Morrow v. Evans*, 223 S. C. 288, 75 S. E. (2d) 598 (1953); *Greene v. Miller*, 114 F. Supp. 150 (1953); *Thompson v. Brewer*, ----- S. C. -----, 82 S. E. (2d) 685 (1954).

Cited in *Witt v. Merrill*, 210 F. (2d) 132 (1954).

§ 46-362. Prima facie speed limits.

Applied in *Chapman v. Associated Transport, Inc.*, 218 S. C. 554, 63 S. E. (2d) 465 (1951); *Dawson v. South Carolina Power Co.*, 220 S. C. 26, 66 S. E. (2d) 322 (1951);

Wall v. Parker, 223 S. C. 79, 74 S. E. (2d) 418 (1953).

Cited in *Moody v. Burns*, 222 S. C. 258, 72 S. E. (2d) 189 (1952).

§ 46-363. When lower speeds required.

Applied in *Gillespie v. Ford*, 222 S. C. 46, 71 S. E. (2d) 596 (1952); *Greene v. Miller*, 114 F. Supp. 150 (1953); *Gillespie*

v. Ford, 225 S. C. 104, 81 S. E. (2d) 44 (1954).

ARTICLE 7.

Driving on Right, Passing, etc.

§ 46-381. Drivers to drive on right side; exceptions.

One should technically violate the law if by so doing he may prevent injuries and damages to himself or to another. *Coffee v. Anderson County*, 224 S. C. 477, 80 S. E. (2d) 51 (1954).

Applied in *Gillespie v. Ford*, 222 S. C. 46, 71 S. E. (2d) 596 (1952); also 225 S. C. 104, 81 S. E. (2d) 44 (1954).

§ 46-386. Limitations on overtaking on the left.

Applied in *Chapman v. Associated Transport, Inc.*, 218 S. C. 554, 63 S. E. (2d) 465 (1951).

§ 46-388. Further limitations on driving to left of center of roadway.

Driver of automobile violated this section when he undertook to pass school bus on left at intersection. *Reese v. National*

Surety Corp., 224 S. C. 489, 80 S. E. (2d) 47 (1954).

Applied in *Gillespie v. Ford*, 222 S. C. 46, 71 S. E. (2d) 596 (1952).

§ 46-392. Driving on divided highways.

Driving on left hand roadway negligence.—When highway is divided into two roadways, driving truck north on roadway reserved for southbound traffic constitutes negligence in the absence of explanatory

or excusatory circumstances, but there is no presumption that such violation is a proximate cause of injury. *Myers v. Evans*, 225 S. C. 80, 81 S. E. (2d) 32 (1954).

§ 46-393. Following too closely.

Applied in *Chapman v. Associated Transport, Inc.*, 218 S. C. 554, 63 S. E. (2d) 465 (1951); *Thompson v. Brewer*, _____ S. C. _____, 82 S. E. (2d) 685 (1954).

ARTICLE 8.

*Starting and Turning and Signals on Stopping and Turning.***§ 46-404. Turning on curve or crest of grade prohibited.**

No person shall turn a vehicle so as to proceed in the opposite direction upon any curve or upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

1949 (46) 466; 1953 (48) 313.

Effect of amendment.—The amendment corrected a mechanical printer's error that appeared in the section in the 1952 Code.

§ 46-406. Signals required for turning or stopping.

Cited in *Thompson v. Brewer*, _____ S. C. _____, 82 S. E. (2d) 685 (1954).

ARTICLE 9.

*Right of Way.***§ 46-421. Vehicles approaching or entering intersection.**

Motorist having right of way must still exercise due care.—Even when a motorist entering an intersection has the right of way, he is still bound to exercise due

care for his own safety, and to prevent injury to others. *Gillespie v. Ford*, 222 S. C. 46, 71 S. E. (2d) 596 (1952).

ARTICLE 10.

*Pedestrians' Rights and Duties.***§ 46-435. Crossing at other than crosswalks.**

Pedestrian crossing at other than marked cross walk not negligent per se when struck by wrong-direction traveler on divided highway.—Where pedestrian crossed southbound roadway of highway divided into two roadways at place where there was no crosswalk and was struck by truck being driven north on southbound roadway, this section had no application, as the right of way mentioned extends only to vehicles going south on southbound roadway, and wrong-direction traveler for-

feited his statutory preferential status; and under circumstances pedestrian would not be negligent as matter of law, and in absence of any circumstances which would reasonably give notice to contrary she would not be negligent in assuming that there would be no vehicle coming from her right. *Myers v. Evans*, 225 S. C. 80, 81 S. E. (2d) 32 (1954).

Applied in *Dawson v. South Carolina Power Co.*, 220 S. C. 26, 66 S. E. (2d) 322 (1951).

§ 46-436. Pedestrians on roadways.

In wrongful death action court properly refused to add to this section when read to jury, "Pedestrians to walk as near as practical to the left edge of the roadway", for to have done so would have invaded

province of Legislature as well as constituting charge on facts at issue. *Culbertson v. Johnson Motor Lines*, _____ S. C. _____, 83 S. E. (2d) 338 (1954).

§ 46-442. Drivers to exercise due care.

Applied in *Dawson v. South Carolina Power Co.*, 220 S. C. 26, 66 S. E. (2d) 150 (1953); *Greene v. Miller*, 114 F. Supp. 322 (1951).

ARTICLE 13.

Stopping, Standing and Parking.

§ 46-481. Outside of business or residence districts.

The burden of proving necessity or excuse, etc.

In accord with paragraph under this catchline in Code. See *Howey v. Jordan's, Inc.*, 223 S. C. 71, 74 S. E. (2d) 216 (1953).

But test is practicability not possibility.

—Test of requirement that vehicle be brought to stop off paved or main traveled part of highway is practicability, not possibility. *Phillips v. Davis*, _____ S. C. _____, 82 S. E. (2d) 515 (1954).

Question for jury.—Ordinarily it is a question for the jury whether it was reasonably possible or practicable, within the meaning of statutory provisions or rules of

law, for one temporarily stopping a car (or truck) along the improved or main traveled portion of the highway for necessary purpose, to have removed it therefrom as required by the statute. *Howey v. Jordan's, Inc.*, 223 S. C. 71, 74 S. E. (2d) 216 (1953).

Plaintiff's recklessness as matter of law bars his recovery even if defendant's truck was stopped in violation of statute. *Thompson v. Brewer*, _____ S. C. _____, 82 S. E. (2d) 685 (1954).

Applied in *Greene v. Miller*, 114 F. Supp. 150 (1953).

§ 46-487. No charge for parking on certain streets in Camden.

Repealed by A. & J. R. 1953 (48) 35.

ARTICLE 13.1.

Property Abandoned on Highways.

§ 46-489. When property considered abandoned.

Any vehicle or other personal property which is left on any right of way of any road or highway in this State for a period of over forty-eight hours is hereby declared to be abandoned property.

1952 (47) 1697.

Cross reference. — As to disposition of unclaimed automobiles in cities of twenty thousand or over, see § 47-406.

§ 46-489.1. Police officers to remove such property.

Every police officer having knowledge of such abandoned property shall seize it and have it removed for safekeeping to such place as may be designated by the sheriff of the county in which it was found, who shall thereupon be charged with its custody and disposition as hereinafter provided.

1952 (47) 1697.

§ 46-489.2. Notice of seizure of such property.

The sheriff having custody of such abandoned property shall forthwith:

(1) Post in three public places within the county a notice setting forth the fact of his possession, a full description of such property, the place at which it was found, the place at which it is being held, the amount of any charges connected with his possession of it and that unless said property shall be reclaimed within thirty days after the posting of such notice it will be advertised for sale and sold as hereinafter provided; and

(2) Mail such notice by registered mail to the owner of such abandoned property and to the holder of any lien upon said property, if the names and addresses of such owner and/or lien holders can be ascertained by reasonable inquiry.

1952 (47) 1697.

§ 46-489.3. Notice of proposed sale.

If thirty days shall elapse after notice, by mail or posting, as required in §

46-489.2, is given and the property has not been reclaimed, the sheriff shall advertise such property for sale, for cash at public auction, giving such information as is required above for a posted notice along with the time, date and place of proposed sale. Such advertisement shall be published at least once a week for three successive weeks prior to the proposed sale in a newspaper published in the county in which such property was abandoned.

1952 (47) 1697.

§ 46-489.4. Reclamation of property before sale.

Any owner or lien holder having an interest in such property may reclaim it at any time before such public sale by presenting evidence of his right to its possession satisfactory to the sheriff in possession and tendering payment of all charges and fees incurred by the sheriff or his county in possession of such property.

1952 (47) 1697.

§ 46-489.5. Lien for towing charges.

Any person authorized by a sheriff to tow, haul or store any abandoned property shall have a lien against such property for the reasonable value of such services which shall be prior to all other liens.

1952 (47) 1697.

§ 46-489.6. Sale and disposition of proceeds.

If abandoned property is not reclaimed prior to the time of any advertised sale of it, the sheriff shall sell it and pay from the proceeds all costs and charges incurred in handling, in advertising the sale of, and in selling such property and any balance remaining shall be paid to the county treasurer of the county for credit to the general fund of the county.

1952 (47) 1697.

§ 46-489.7. Payment of claims of owner, lien holders, etc.

For a period of not in excess of two years after the payment of any sum into the general fund of any county on account of the sale of any such abandoned property, the governing body of the county shall hear and determine claims of any persons claiming to be damaged by the sale of any such abandoned property and shall make awards to owners or lien holders as their interests may appear, but in no event shall such award be in excess of the amount received by the county on account of the sale of the property which is the subject of any such claim. The decision of the governing body of the county in connection with any such claim shall be final.

1952 (47) 1697.

ARTICLE 15.

Equipment.

SUBDIVISION IV.

Horns, Sirens, etc.

§ 46-582. Use of horn.

Applied in *Greene v. Miller*, 114 F. Supp. 150 (1953).

SUBDIVISION VIII.

*Flares, Fumes and Other Warning Signals When Vehicle Disabled;
Carrying Explosives.*

§ 46-624. Display of warning devices when vehicle disabled.

Applied in *Howey v. Jordan's, Inc.*, 223 S. C. 71, 74 S. E. (2d) 216 (1953).

CHAPTER 31.

MOTOR VEHICLE SAFETY RESPONSIBILITY ACT.

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 46-706. Sale of vehicle when registration suspended not affected by chapter.
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 46-708. Self-insurers.
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- 46-716. State Highway Department to administer chapter.
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ARTICLE 1.

*General Provisions.***§ 46-701. Short title.**

This chapter may be cited as the Motor Vehicle Safety Responsibility Act. 1952 (47) 1853.

Cited in Continental Casualty Company v. Padgett, 123 F. Supp. 847 (1954).

§ 46-702. Definitions.

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those instances in which the context clearly indicates a different meaning:

(1) *Department* means the South Carolina State Highway Department, acting directly or through its duly authorized officers and agents;

(2) *Judgment* means any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of service, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages;

(3) *License* means any license, temporary instruction permit or temporary license issued under the laws of this State pertaining to the licensing of persons to operate vehicles;

(4) *Motor vehicle* means every self-propelled vehicle which is designed for use upon a highway, including trailers and semi-trailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels and well drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails;

(5) *Nonresident* means every person who is not a resident of this State;

(6) *Nonresident operating privilege* means the privilege conferred upon a non-resident by the laws of this State pertaining to the operation by him of a motor vehicle or the use of a motor vehicle owned by him in this State;

(7) *Operator* means every person who is in actual physical control of a motor vehicle whether or not licensed as an operator or chauffeur under the laws of this State;

(8) *Owner* means a person who holds the legal title of a motor vehicle or, in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the

conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be considered the owner for the purposes of this chapter ;

(9) *Proof of financial responsibility* means proof of ability to respond in damages for liability on account of accidents occurring after the effective date of such proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of five thousand dollars, because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, in the amount of ten thousand dollars because of bodily injury to or death of two or more persons in any one accident and in the amount of one thousand dollars because of injury to or destruction of property of others in any one accident ;

(10) *Registration* means registration certificates and registration or license plates issued under the laws of this State pertaining to the license and registration of motor vehicles ; and

(11) *State* means any state, territory or possession of the United States, the District of Columbia or any province of the Dominion of Canada.

1952 (47) 1853.

§ 46-703. Interpretation of chapter.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact substantially identical legislation.

1952 (47) 1853.

§ 46-704. Chapter not applicable to certain vehicles.

This chapter shall not apply with respect to any motor vehicle owned by the United States, this State or any political subdivision of this State or any municipality therein ; nor, except for §§ 46-726, 46-733 and 46-750.14, shall it apply with respect to any motor vehicle which is subject to other laws of this State, which require their owners to carry insurance or to place security, in a manner which would make such owners carry insurance or place security in addition to the amounts required by this chapter.

1952 (47) 1853.

§ 46-705. Chapter not to affect conditional vendors, etc.

This chapter shall not affect the rights of any conditional vendor, chattel mortgagee or lessor of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this chapter.

1952 (47) 1853.

§ 46-706. Sale of vehicle when registration suspended not affected by chapter.

This chapter shall not prevent the owner of a motor vehicle, the registration of which has been suspended hereunder, from effecting a bona fide sale of the motor vehicle to another person whose rights or privileges are not suspended under this chapter nor prevent the registration of the motor vehicle by the transferee.

1952 (47) 1853.

§ 46-707. Chapter not to bar other process.

Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

1952 (47) 1853.

§ 46-708. Self-insurers.

Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Department as provided in this section. The Department may, in its discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed

of ability to pay judgments obtained against him. Upon not less than five days' notice and a hearing pursuant to the notice, the Department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after the judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

1952 (47) 1853.

§ 46-709. Penalty for driving while license or operating privilege suspended or revoked.

Any person whose license or registration or nonresident's operating privilege has been suspended or revoked under this chapter and who, during such suspension or revocation, drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by him to be operated by another upon any highway, except as permitted under this chapter, shall be fined one hundred dollars or imprisoned for thirty days.

1952 (47) 1853.

§ 46-710. Penalty for forgery of proof of financial responsibility.

Any person who shall forge or, without authority, sign any notice provided for under §§ 46-727 to 46-729 that a policy or bond is in effect or any evidence of proof of financial responsibility or who files or offers for filing any such notice or evidence of proof knowing or having reason to believe that it is forged or signed without authority shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

1952 (47) 1853.

§ 46-711. General penalty.

Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be fined not more than one hundred dollars or imprisoned for not more than thirty days.

1952 (47) 1853.

ARTICLE 2.

Administration.

§ 46-716. State Highway Department to administer chapter.

The Department shall administer and enforce the provisions of this chapter and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the Department under the provisions of this chapter.

1952 (47) 1853.

§ 46-717. Appeals from the Department.

Any person aggrieved by an order or act of the Department under the provisions of this chapter may, within ten days after notice thereof, file a petition in the circuit court of the county of his residence for a trial de novo to determine whether the order or act is lawful and reasonable. The filing of the petition shall not suspend the order or act of the Department unless a stay thereof shall be allowed by the judge of the court pending final determination of the matter. The court shall summarily hear the petition and may make any appropriate order or decree.

1952 (47) 1853.

§ 46-718. Department to furnish operating records of persons; not to be used as evidence.

The Department shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter. Such abstract shall also fully designate the motor vehicles, if any, registered in

the name of that person, and, if there shall be no record of any conviction of that person for violating any laws relating to the operation of a motor vehicle or of any injury or damage caused by that person, the Department shall so certify. These abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident.

1952 (47) 1853.

§ 46-719. Surrender of license and registration.

Any person (a) whose license and registration has been suspended as herein provided, (b) whose policy of insurance or bond, when required under this chapter, has been cancelled or terminated or (c) who has neglected to furnish other proof upon request of the Department shall immediately return his license and registration to the Department. If any person shall fail to return to the Department his license or registration as provided herein the Department may secure possession thereof by a commissioned highway patrolman.

Any person willfully failing to return his license or registration as required in this section shall be fined one hundred dollars or imprisoned for thirty days.

1952 (47) 1853.

§ 46-720. Assigned risk plans.

After consultation with insurance companies authorized to issue automobile liability policies in this State, the Insurance Commissioner shall approve a reasonable plan or plans for the equitable apportionment among such companies of applicants for such policies and for motor vehicle liability policies who are in good faith entitled to such policies but are unable to procure them through ordinary methods. When any such plan has been approved, all such insurance companies shall subscribe thereto and participate therein. Any applicant for any such policy, any person insured under any such plan and any insurance company affected may appeal to the Insurance Commissioner from any ruling or decision of the manager or committee designated to operate such plan. Any person aggrieved hereunder by any order or act of the Insurance Commissioner may, within ten days after notice thereof, file a petition in the court of common pleas of Richland County for a review thereof. The court shall summarily hear the petition and may make any appropriate order or decree.

1952 (47) 1853.

ARTICLE 3.

Security Following Accident.

§ 46-726. Report of accident required.

The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of twenty-five dollars or more shall, within five days after such accident, forward a written report of such accident to the Department as required by law. The reports shall contain information to enable the Department to determine whether the requirements for the deposit of security under §§ 46-727 to 46-729 are inapplicable by reason of the existence of insurance or other exceptions specified in this chapter.

1952 (47) 1853.

Editor's note.—The word "inquiry" is clear that this was a typographical error used in the original act and has been retained in this Supplement though it seems and that the word "injury" was intended.

§ 46-727. Suspension of license unless security given following accident.

The Department upon receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury, death or damage to the property of any one person in excess of fifty dollars shall, within sixty days thereafter, suspend the license of each operator or driver and all registrations of each owner of a motor vehicle in any manner involved in such accident and, if such operator

or driver is a nonresident, the privilege of operating a motor vehicle within this State and the privilege of the use within this State of any motor vehicle owned by him, unless such operator, driver or owner or both shall deposit security in a sum which shall be sufficient in the judgment of the Department to satisfy any judgments for damages resulting from the accident which may be recovered against the operator or owner. Notice of the suspension shall be sent by the Department to the operator and owner at least ten days before the effective date of the suspension and shall state the amount required as security.

1952 (47) 1853.

§ 46-728. Same; exceptions.

Section 46-727 shall not apply to any of the following:

(1) To the operator or owner if the owner had in effect at the time of the accident an automobile liability policy with respect to the motor vehicle involved in the accident;

(2) To the operator, if not the owner of the motor vehicle, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To the operator or owner if the liability of the operator or owner for damages resulting from the accident is, in the judgment of the Department, covered by any other form of liability insurance policy or bond;

(4) To any person qualifying as a self-insurer under § 46-708;

(5) To the operator or owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such owner or operator;

(6) To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating the motor vehicle without his permission, express or implied; or

(7) If, before the date that the Department would otherwise suspend the license and registration or nonresident's operating privilege under § 46-727, there shall be filed with the Department evidence satisfactory to it that the person who would otherwise have to file security has been released from liability, had been finally adjudicated not to be liable, has executed a warrant for confession of judgment, payable when and in such installments as the parties have agreed to or has executed a duly acknowledged written agreement, providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.

1952 (47) 1853.

§ 46-729. When policy or bond of unqualified insurer effective.

No policy or bond shall be effective under § 46-728 unless (a) issued by an insurance company or surety company authorized to do business in this State, except that, if the motor vehicle was not registered in this State or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond or the most recent renewal thereof, the policy or bond shall be effective under said section if the insurance company or surety company, though not authorized to do business in this State, shall execute a power of attorney authorizing the Department to accept service on its behalf of notice of process in any action upon the policy or bond arising out of the accident and (b) the policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to this limit for one person, to a limit of not less than ten thousand dollars because of bodily injury to or death of two or more persons in any one accident.

and, if the accident has resulted in injury to or destruction of property, to a limit of not less than one thousand dollars because of injury to or destruction of property of others in any one accident.

1952 (47) 1853.

§ 46-730. Application to unlicensed drivers and unregistered motor vehicles.

In case the operator or the owner of a motor vehicle involved in an accident within this State has no license or registration, he shall not be allowed a license or registration until he has complied with the requirements of this article to the same extent that would be necessary if, at the time of the accident, he had held a license and registration.

1952 (47) 1853.

§ 46-731. Notice to state of nonresident when operating privilege suspended.

When a nonresident's operating privilege is suspended pursuant to §§ 46-727 or 46-732, the Department shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such nonresident resides.

1952 (47) 1853.

§ 46-732. Duration of suspension.

The license and registration and nonresident operating privilege suspended as provided in § 46-727 shall, except as otherwise provided for in § 46-733, remain suspended and shall not be renewed nor shall any license or registration be issued to the person whose license, registration or nonresident's operating privilege has been so suspended until:

(1) Such person shall deposit or there shall be deposited on his behalf the security required under § 46-727;

(2) One year shall have elapsed following the date of the accident and evidence satisfactory to the Department has been filed with it that during that period no action for damages arising out of the accident has been instituted; or

(3) Evidence satisfactory to the Department has been filed with it of a release from liability, a final adjudication of nonliability, a warrant for confession of judgment or a duly acknowledged written agreement, in accordance with the provisions of paragraph (7) of § 46-728. But (a) in the event there shall be any default in the payment of any installment under any confession of judgment, then, upon notice of default, the Department shall suspend the license and registration or nonresident's operating privilege of the person defaulting which shall not be restored until the entire amount provided for in the confession of judgment has been paid and (b) in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of default, the Department shall suspend the license and registration or nonresident's operating privilege of the person defaulting which shall not be restored unless and until (i) such person deposits and thereafter maintains security as required under § 46-727 in the amount the Department may determine or (ii) one year shall have elapsed following the date when the security was required and during that period no action upon the agreement has been instituted in a court in this State.

1952 (47) 1853.

§ 46-733. Operation of motor vehicles in employ of others.

Whenever any person whose license would otherwise have been suspended for failure to deposit security required pursuant to this article is, or later becomes, an operator in the employ of another owner, the Department may in its discretion, notwithstanding any provisions in this chapter to the contrary, allow such person to retain his license to operate a vehicle of another owner, in the pursuit of such employment, if the employer owner of the vehicle shall have furnished proof of financial responsibility covering the operation of any vehicle which such

person may be permitted to operate. The Department shall designate the restrictions imposed pursuant to this section on that person's license.
1952 (47) 1853.

§ 46-734. Form and amount of security.

The security required under this article shall be in the form and in the amount that the Department may require but in no case in excess of the limits specified in § 46-727 in reference to the acceptable limits of a policy or bond. The person depositing such security shall specify in writing the person on whose behalf the deposit is made and, at any time while the deposit is in the custody of the Department or State Treasurer, the person depositing it may, in writing, amend the specifications of the persons on whose behalf the deposit is made to include additional persons. But a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.
1952 (47) 1853.

§ 46-735. Department may reduce excessive security.

The Department may at any time reduce the amount of security ordered in any case if, in its judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative, notwithstanding the provisions of § 46-736.
1952 (47) 1853.

§ 46-736. Custody, disposition and return of security.

Security deposited in compliance with the requirements of this article shall be placed by the Department in the custody of the State Treasurer and shall be applicable only to the payment of judgments rendered against the persons on whose behalf the deposit was made for damages arising out of the accident in question in an action at law, begun not later than one year after the date of the accident or within one year after the date of deposit of any security under paragraph (3) of § 46-732, and this deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the Department has been filed with it that there has been a release from liability, a final adjudication of nonliability, a warrant for confession of judgment or a duly acknowledged agreement, in accordance with paragraph (7) of § 46-728, or whenever, after the expiration of one year from the date of the accident or within one year after the date of deposit of any security under paragraph (3) of § 46-732, the Department shall be given reasonable evidence that there is no action pending and no judgment rendered in the action left unpaid.
1952 (47) 1853.

§ 46-737. Matters not to be evidence in civil suits.

Neither the action taken by the Department pursuant to this article, the findings, if any, of the Department upon which action is based, nor the security filed as provided in this article shall be referred to in any way, or be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages.
1952 (47) 1853.

ARTICLE 4.

Proof of Financial Responsibility for the Future.

§ 46-741. Courts to report nonpayment of judgments.

Whenever any person fails within sixty days to satisfy any judgment, it shall be the duty of the clerk of court, or of the judge of a court which has no clerk, in which any such judgment has been rendered within this State to forward to

the Department immediately after the expiration of said period of sixty days a certified copy of such judgment.

1952 (47) 1853.

§ 46-742. Notice of nonpayment of judgment against nonresident.

If the defendant named in any certified copy of a judgment reported to the Department is a nonresident, the Department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

1952 (47) 1853.

§ 46-743. Suspension for nonpayment of judgment.

The Department, upon receipt of a certified copy of a judgment, shall suspend the license and registration and any nonresident's operating privilege of any person against whom the judgment was rendered, except as otherwise provided in §§ 46-744 to 46-746 and 46-750.

1952 (47) 1853.

§ 46-744. Permission to drive on consent of judgment creditor.

If the judgment creditor consents in writing, in the form which the Department may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, this may be allowed by the Department for six months from the date of the consent and thereafter until the consent is revoked in writing, notwithstanding default in the payment of the judgment or any installment thereof prescribed in § 46-750, if the judgment debtor furnishes proof of financial responsibility.

1952 (47) 1853.

§ 46-745. License, etc., not suspended if liability proved to be covered by insurance.

Any person whose license, registration or nonresident's operating privilege has been suspended or is about to be suspended or shall become subject to suspension under the provisions of this article may be relieved from the effect of the judgment as prescribed in this article by filing with the Department an affidavit stating that at the time of the accident upon which the judgment has been rendered the affiant was insured, that the insurer is liable to pay the judgment and the reason, if known, why the insurance company has not paid the judgment. He shall also file the original policy of insurance or a certified copy thereof, if available, and other documents which the Department may require to show that the loss, injury or damage for which the judgment was rendered was covered by the policy of insurance. If the Department is satisfied from the papers that the insurer was authorized to issue the policy of insurance at the time and place of issuing the policy and that the insurer is liable to pay the judgment, at least to the extent and for the amounts required in this chapter, the Department shall not suspend the license, registration or nonresident's operating privilege or, if already suspended, shall reinstate them.

1952 (47) 1853.

§ 46-746. Permission to drive for different employer.

Whenever any person whose license would otherwise have been suspended for failure to satisfy a judgment as provided in § 46-743 is, or later becomes, an operator in the employ of another owner, the department may in its discretion, notwithstanding any provisions in this chapter to the contrary, allow such person to retain his license to operate a vehicle of another owner, in the pursuit of such employment, if the employer owner of the vehicle shall have furnished proof of financial responsibility covering the operation of any vehicle which such person

may be permitted to operate. The Department shall designate the restrictions imposed pursuant to this section on that person's license.

1952 (47) 1853.

§ 46-747. Suspension to continue until judgment paid and proof given.

The license, registration or nonresident's operating privilege shall, except as otherwise provided in § 46-746, remain suspended and shall not be renewed, nor shall any license or registration be thereafter issued in the name of that person, including that person if not previously licensed, until every judgment is satisfied in full or to the extent hereinafter provided and until the person gives proof of financial responsibility, subject to the exemptions stated in §§ 46-744 to 46-746 and 46-750.

1952 (47) 1853.

§ 46-748. Discharge in bankruptcy not to affect status under article.

A discharge in bankruptcy following the rendering of any judgment shall not relieve the judgment debtor from any of the requirements of this article.

1952 (47) 1853.

§ 46-749. Payments sufficient to satisfy requirements.

Judgments herein referred to shall, for the purpose of this chapter only, be considered satisfied:

(1) When five thousand dollars has been credited upon any judgment rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

(2) When, subject to the limit of five thousand dollars because of bodily injury to or death of one person, the sum of ten thousand dollars has been credited upon any judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) When one thousand dollars has been credited upon any judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

Payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

1952 (47) 1853.

§ 46-750. Installment payment of judgments; default.

A judgment debtor upon due notice to the judgment creditor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may order and fix the amounts and times of payment of the installments.

The department shall not suspend a license, registration or nonresident's operating privilege and shall restore any license, registration or nonresident's operating privilege suspended following nonpayment of a judgment when the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of the judgment in installments and while the payment of any such installment is not in default. In the event the judgment debtor fails to pay any installment as specified by the order, then, upon notice of the default, the Department shall suspend the license, registration or nonresident's operating privilege of the judgment debtor until the judgment is satisfied, as provided in this chapter.

1952 (47) 1853.

§ 46-750.1. Suspension of registration of vehicles of person convicted, etc., until proof furnished of financial responsibility.

Whenever the Department, under any law of this State, suspends or revokes the license of any person upon receiving a record of conviction or a forfeiture of bail, the Department shall also suspend the registration of all motor vehicles registered in the name of that person, except that it shall not suspend the registration, unless otherwise required by law, if that person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by him. Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed, no license shall be thereafter issued to such person and no motor vehicle shall be thereafter registered in the name of that person until permitted under the motor vehicle laws of this State and not then until he shall give and thereafter maintain proof of financial responsibility.

1952 (47) 1853.

§ 46-750.2. No license, etc., to person operating without license until proof furnished of financial responsibility.

If a person is not licensed, but by final order or judgment is convicted of, or forfeits any bail or collateral deposited to secure an appearance for trial for, any offense requiring the suspension or revocation of license, operating a motor vehicle upon the highways without being licensed to do so or operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in his name until he shall give and thereafter maintain proof of financial responsibility.

1952 (47) 1853.

§ 46-750.3. Nonresident's operating privilege suspended until proof furnished of financial responsibility.

Whenever the Department suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, this privilege shall remain suspended or revoked unless that person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

1952 (47) 1853.

§ 46-750.4. Alternate methods of giving proof of financial responsibility.

Proof of financial responsibility when required under this chapter may be given by filing:

- (1) A certificate of insurance as provided in §§ 46-750.5 and 46-750.6;
- (2) A bond as provided in § 46-750.8; or
- (3) A certificate of deposit of money or securities as provided in § 46-750.12.

1952 (47) 1853.

§ 46-750.5. Certificate of insurance as proof.

Proof of financial responsibility may be furnished by filing with the Department the written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate shall give the date of the motor vehicle liability policy, which shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless the motor vehicle is so designated in the certificate.

1952 (47) 1853.

§ 46-750.6. Certificate furnished by nonresident as proof.

The nonresident owner of a motor vehicle not registered in this State may give proof of financial responsibility by filing with the Department written certificates of an insurance carrier authorized to transact business in the State in which the motor vehicle or motor vehicles described in the certificate are registered or, if the nonresident does not own a motor vehicle, then in the State in which the insured resides if the certificate otherwise conforms with the provisions of this chapter and the department shall accept it upon condition that the insurance carrier complies with the following provisions with respect to the policies certified :

(1) The insurance carrier shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this State; and

(2) The insurance carrier shall agree in writing that the policies shall be construed to conform with the laws of this State relating to the terms of motor vehicle liability policies issued herein.

1952 (47) 1853.

§ 46-750.7. Effect of default of insurance carrier not authorized to do business in State.

If any insurance carrier not authorized to transact business in this State, which has qualified to furnish proof of financial responsibility, defaults in any of these undertakings or agreements, the Department shall not thereafter accept as proof any certificate of that carrier whether formerly filed or thereafter tendered as proof, so long as the default continues.

1952 (47) 1853.

§ 46-750.8. Bond as proof of financial responsibility.

Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this State or a bond with at least two individual sureties each owning real estate within this State and together having equities equal in value to at least twice the amount of the bond. Such real estate shall be scheduled in the bond approved by a judge of a court of record. The bond shall be conditioned for payment of the amounts specified in paragraph (9) of § 46-702. The bond shall be filed with the Department and shall not be cancelable except after ten days' written notice to the department. Any surety scheduling real estate security shall furnish satisfactory evidence of title and the nature and extent of all encumbrances thereon and the value of the surety's interest therein in the manner which the judge of the court of record may require.

1952 (47) 1853.

§ 46-750.9. Bond constitutes lien against real estate.

The bond shall constitute a lien in favor of the State upon the real estate scheduled of any surety. Such lien shall exist in favor of any holder of a final judgment against the person who has filed the bond for damages, including damages for care and loss of service, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after the bond is filed, upon the filing of notice to that effect by the Department in the office of the proper clerk of court of the county or city where the real estate is located.

1952 (47) 1853.

§ 46-750.10. Notice filed by Department with the clerk of court.

The notice filed by the Department under the provisions of § 46-750.9 shall, in addition to other matters which are considered to be pertinent by the Depart-

ment, contain a legal description of the real estate scheduled, the name of the holder of the record title, the amount for which it stands as security and the name of the person in whose behalf proof is being made. Upon the filing of the notice the clerk of court shall retain it as part of the records of the court and shall enter upon the record the date and hour of filing, the name of the surety, the name of the title holder of record, the description of the real estate and a notation that a lien is charged on the real estate pursuant to such notice.

1952 (47) 1853.

§ 46-750.11. Action on bond.

If a judgment rendered against the principal on the bond shall not be satisfied within sixty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action in the name of the State against the company or persons executing the bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who executed the bond. An action to foreclose any lien upon real estate scheduled by any surety under the provisions of this chapter shall be brought in the same manner as is provided for the foreclosure of real estate mortgages in this State.

1952 (47) 1853.

§ 46-750.12. Money or securities as proof.

Proof of financial responsibility may be evidenced by a certificate of the State Treasurer to the effect that the person named therein has deposited with him eleven thousand dollars in cash or securities such as may legally be purchased by savings banks or for trust funds of a market value of eleven thousand dollars. The State Treasurer shall not accept the deposit and issue a certificate therefor and the Department shall not accept such a certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county in which the depositor resides.

1952 (47) 1853.

§ 46-750.13. Deposit held to satisfy certain judgments.

A deposit made pursuant to the provisions of § 46-750.12 shall be held by the State Treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against the person making the deposit for damages, including damages for care and loss of service, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after the deposit is made. Money or securities deposited shall not be subject to attachment or execution unless the attachment or execution shall arise out of a suit for damages which this chapter covers.

1952 (47) 1853.

§ 46-750.14. Owner may give proof for others.

Whenever any person required to give proof of financial responsibility hereunder is, or later becomes, an operator in the employ of any owner or is, or later becomes, a member of the immediate family or household of an owner, the Department shall accept proof given by the owner in lieu of proof by the other person to permit that person to operate a motor vehicle for which the owner has given proof as herein provided. The Department shall designate the restrictions imposed by this section on that person's license.

1952 (47) 1853.

§ 46-750.15. Substitution of proof.

The Department shall consent to the cancellation of any bond or certificate of insurance or the Department shall direct the State Treasurer to, and the State

Treasurer shall, return any money or securities deposited to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.

1952 (47) 1853.

§ 46-750.16. Other proof may be required.

Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which it was required, the Department shall require other proof as required by this chapter and shall suspend the license and registration or the nonresident's operating privilege pending the filing of other proof.

1952 (47) 1853.

§ 46-750.17. When proof may be cancelled or returned.

The Department shall upon request consent to the immediate cancellation of any bond or certificate of insurance or shall return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility or the Department shall waive the requirement of filing proof in any of the following events:

(1) At any time after three years from the date the proof was required when, during the three year period preceding the request, the Department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration or nonresident's operating privilege of the person by or for whom the proof was furnished;

(2) In the event of the death of the person on whose behalf the proof was filed or the permanent incapacity of the person to operate a motor vehicle; or

(3) In the event the person who has given proof surrenders his license and registration to the Department.

1952 (47) 1853.

§ 46-750.18. When proof not to be cancelled or returned.

Notwithstanding the provision of § 46-750.17 the Department shall not consent to the cancellation of any bond or the return of any money or securities if (a) any action for damages upon a liability covered by the proof is then pending (b) any judgment upon such liability is then unsatisfied or (c) the person who has filed the bond or deposited the money or securities has, within one year immediately preceding the request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant (a) as to the nonexistence of these facts, (b) that he has been released from all of his liability for the injury or damage or (c) that he has been finally adjudicated not to be liable for such injury or damage shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the Department.

1952 (47) 1853.

§ 46-750.19. When person required to re-establish proof.

Whenever any person whose proof has been cancelled or returned under paragraph (3) of § 46-750.17 applies for a license or registration within a period of three years from the date proof was originally required, such application shall be refused unless the applicant shall re-establish the proof for the remainder of the three year period.

1952 (47) 1853.

ARTICLE 5.

Motor Vehicle Policies.

§ 46-750.21. Motor vehicle liability policy defined.

A "motor vehicle liability policy" as the term is used in this chapter shall mean an owner's or an operator's policy of liability insurance, certified as provided in

§§ 46-750.5 or 46-750.6 as proof of financial responsibility and issued, except as otherwise provided in § 46-750.6, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

1952 (47) 1853.

§ 46-750.22. Requirements of owner's policy of liability insurance.

An owner's policy of liability insurance shall:

(1) Designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

(2) Insure the person named therein and any other person, as insured, using any of such motor vehicles with the express or implied permission of the named insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicles within the United States of America or the Dominion of Canada, subject to limits, exclusive of interest and costs, with respect to each motor vehicle, as follows: five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, ten thousand dollars because of bodily injury to or death of two or more persons in any one accident and one thousand dollars because of injury to or destruction of property of others in any one accident.

1952 (47) 1853.

§ 46-750.23. Requirements of operator's policy of liability insurance.

An operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle now owned by him within the same territorial limits and subject to the same limits of liability set forth in § 46-750.22 with respect to an owner's policy of liability insurance.

1952 (47) 1853.

§ 46-750.24. Requirements of all motor vehicle liability policies.

A motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability and shall contain an agreement or be endorsed to the effect that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all of the provisions of this chapter.

1952 (47) 1853.

§ 46-750.25. What such policies need not cover.

A motor vehicle liability policy need not insure any liability under the workman's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance or repair of the motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by, the insured.

1952 (47) 1853.

§ 46-750.26. Provisions deemed incorporated in all motor vehicle liability policies.

Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by the motor vehicle liability policy occurs;

(2) The policy may not be cancelled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage;

(3) No statement made by the insured or on his behalf and no violation of the policy shall defeat or void the policy;

(4) The satisfaction by the insured of a judgment for the injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage;

(5) The insurance carrier shall have the right to settle any claim covered by the policy and, if the settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in paragraph (2) of § 46-750.22; and

(6) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between the parties.

1952 (47) 1853.

§ 46-750.27. Excess coverage of motor vehicle liability policy.

Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and the excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants this excess or additional coverage the term "*motor vehicle liability policy*" shall apply only to that part of the coverage which is required by §§ 46-750.22 and 46-750.23.

1952 (47) 1853.

§ 46-750.28. Additional provisions motor vehicle policy may contain.

Any motor vehicle liability policy may provide (a) that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter and/or (b) for the prorating of the insurance thereunder with other valid and collectible insurance.

1952 (47) 1853.

§ 46-750.29. Fulfillment of requirements by several policies.

The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

1952 (47) 1853.

§ 46-750.30. Binders may fulfill requirements.

Any binder issued pending the issuance of a motor vehicle liability policy shall be considered as fulfilling the requirements for such policy.

1952 (47) 1853.

§ 46-750.31. Notice of cancellation or termination of certified policy.

When an insurance carrier has certified a motor vehicle liability policy under §§ 46-750.5 or 46-750.6, the insurance so certified shall not be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance certified shall be filed with the Department, except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

1952 (47) 1853.

§ 46-750.32. Chapter not to affect other policies.

This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may be required by any other law of this State and such policies, if they contain an agreement or are endorsed to conform with the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

1952 (47) 1853.

§ 46-750.33. Chapter inapplicable to certain policies.

This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured.

1952 (47) 1853.

CHAPTER 4.

OPERATION OF MOTOR VEHICLES ON BEACHES.

Sec.	Sec.
46-752. Operation of motor vehicles on Magnolia Beach in Georgetown County.	46-759. Same; between old Cherry Grove Inlet and Hog Inlet in Horry County.

§ 46-752. Operation of motor vehicles on Magnolia Beach in Georgetown County.

It is unlawful for any person to operate a motor vehicle at any time on that portion of Magnolia Beach in *Georgetown* County between the inlet separating Magnolia Beach from Pawley's Island and Murrell's Inlet on the north. Any violation of this section shall be a misdemeanor and shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.

1952 (47) 1902.

§ 46-759. Same; between old Cherry Grove Inlet and Hog Inlet in Horry County.

The operation of motor vehicles on the ocean strand between old Cherry Grove Inlet and Hog Inlet in *Horry* County from June first through Labor Day, inclusive, is prohibited, but this section shall not apply to (a) ambulances, (b) fire department equipment, (c) police cars being used in the ordinary course of their business, (d) vehicles transporting doctors to a patient and (e) development equipment being used for earth moving construction work in the Cherry Grove Beach and East Cherry Grove Beach developments if the area in which such development equipment is being used is prominently marked by signs measuring not less than two feet square containing a notice to the public that the area within the signs is a danger area. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not exceeding one hundred dollars, or by imprisonment for not exceeding thirty days, or both, in the discretion of the court.

1954 (48) 1490.

CHAPTER 5.

MISCELLANEOUS PROVISIONS.

§ 46-801. Liability for injury to guests in car.

The purpose of this section was to deny a guest a right of action for simple negligence and require for liability more than that. *Oswald v. Weiner*, 218 S. C. 206, 62 S. E. (2d) 311 (1950).

It does not serve to relieve a master or principal from the ordinary burden of liability under the rule of respondeat superior. *Oswald v. Weiner*, 218 S. C. 206, 62 S. E. (2d) 311 (1950).

Section inapplicable to public carrier of passengers.—This section concludes with an exceptive provision which makes it inapplicable to a public carrier, which the context fairly shows to be a carrier of passengers. *Bailey v. Seymore*, 224 S. C. 162, 77 S. E. (2d) 803 (1953).

As to complaint failing to show in what capacity decedent was riding in defendant's vehicle, see *Bailey v. Seymore*, 224 S. C. 162, 77 S. E. (2d) 803 (1953).

Applied in *Alexander v. United States*, 98 F. Supp. 453 (1951).

CHAPTER 6.

ENFORCEMENT; STATE HIGHWAY PATROL.

§ 46-852. **Bonds of patrolman.**

Cited in *Rogers v. U. S. Fidelity & Guaranty Co.*, _____ S. C. _____, 81 S. E. (2d) 896 (1954).

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OF
SOUTH CAROLINA
1952

1954 Cumulative Supplement

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This pocket supplement is not official. At the direction of the Committee on Statutory Laws the Acts as enacted have been edited in various particulars to conform them to the style and arrangement of the Code of 1952 and to make them more readily usable by the practitioner for ordinary work. For further details see the Foreword in the Pocket Supplement to Volume 1.

Code of Laws of South Carolina

1952

1954 CUMULATIVE SUPPLEMENT

Title 59.

Public Works and Certain Public Authorities.

- Chap. 3. Municipal Public Works, §§ 59-172.1 to 59-566.5.
4. Districts for Certain Public Works, § 59-609.1.
5. The Revenue Bond Refinancing Act of 1937, §§ 59-653 to 59-656.

CHAPTER 1.

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY.

§ 59-1. Created; offices.

The South Carolina Public Service Authority is a public corporation, etc.

In accord with paragraph under this catchline in Code. See *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

Authority cannot be sued in federal court where State has not waived immunity.—The Public Service Authority is not a separate entity and is a department or arm of the State government, and a suit against the Authority to recover compen-

sation for the taking of property cannot be brought in a federal court where the State has not waived its immunity under the Eleventh Amendment to the United States Constitution and has not consented to be therein sued. *Dupont v. South Carolina Public Service Authority*, 100 F. Supp. 778 (1951), overruling *South Carolina Public Service Authority v. New York Cas. Co.*, 74 F. Supp. 831 (1947), treated in the original.

§ 59-3. Powers.

Section does not authorize suit in every court.—The statute creating the Public Service Authority and permitting it to sue and be sued should not be construed to mean that suit may be brought in any court, State or federal. *Dupont v. South*

Carolina Public Service Authority, 100 F. Supp. 778 (1951).

Quoted in *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

§ 59-5. Acquire property; procedure.

Cited in *Cain v. South Carolina Public Service Authority*, 222 S. C. 200, 72 S. E. (2d) 177 (1952).

CHAPTER 3.

MUNICIPAL PUBLIC WORKS.

Article 2.

Commissioners of Public Works Generally.

- Sec.
59-172.1. Special provision for Forest Acres.
59-174. No such commissioners in certain municipalities.
59-175.1. Vacancies in Gaffney.

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Acquisition of Lands and Condemnation Thereof.

- Sec.
59-202. Condemnation on refusal to sell land desired.
59-203 to 59-211. [Repealed.]

Article 5.**Miscellaneous Acquisition and Condemnation Provisions.**

Sec.

59-221. Cities and towns may acquire lands, etc., for water and electric works.

59-222. Condemnation of land for water-works and to protect water-sheds.

59-223. [Repealed.]

59-224. Drains for surface water.

59-226. [Repealed.]

Article 6.**Municipal Utilities Generally.**

59-241. Construction and operation of municipal utilities.

Article 9.**Revenue Bond Act for Utilities.**

59-365.1. Construction and operation of natural gas system in other municipalities.

59-371. [Repealed.]

Article 12.**Extension of Water and Sewer Systems.**

59-462.1. Same; special provision for Cayce and Lexington.

Article 15.**Water, lights and Sewerage Beyond City Limits.**

Sec.

59-536. Furnishing water, light or sewerage disposal beyond city limits in Anderson, Kershaw, McCormick, Spartanburg and York Counties.

Article 17.**Water Front Improvements.**

59-561. Cities of fifty thousand or more may condemn lands on water front.

59-565. [Repealed.]

Article 17.1.**Off Street Parking Facilities Act.**

59-566. Citation of Article.

59-566.1. Definitions.

59-566.2. Municipalities may establish and operate on-street parking facilities.

59-566.3. May also establish and maintain off-street parking facilities; financing.

59-566.4. Authority under Revenue Bond Act and Refunding Revenue Bond Act.

59-566.5. Further powers of municipalities as to such bonds.

ARTICLE 2.*Commissioners of Public Works Generally.***§ 59-171. Election, term and power to sue, etc.**Cited in *Spartanburg v. Blalock*, 223 S.

C. 252, 75 S. E. (2d) 361 (1953).

§ 59-172.1. Special provision for Forest Acres.

At the election provided for by § 47-317.1 in the town of *Forest Acres* in *Richland* County there shall be elected three commissioners of public works who shall serve for a period of two years or until their successors shall have been elected and qualified.

1952 (47) 2023.

Cross reference. — As to election of mayor and councilmen at such election, see § 47-317.1.

§ 59-174. No such commissioners in certain municipalities.

In the cities and towns of *Abbeville*, *Barnwell*, *Belton*, *Bennettsville*, *Blackville*, *Branchville*, *Camden*, *Charaw*, *Chesnee*, *Chester*, *Clinton*, *Clio*, *Clover*, *Conway*, *Cowpens*, *Denmark*, *Dillon*, *Donalds*, *Due West*, *Edgefield*, *Estill*, *Fairfax*, *Fort Mill*, *Fountain Inn*, *Georgetown*, *Heath Springs*, *Honea Path*, *Kingstree*, *Lake City*, *Lamar*, *Lancaster*, *Landrum*, *Latta*, *Lexington*, *Loris*, *Marion*, *McColl*, *Myrtle Beach*, *Newberry*, *North Augusta*, *Orangeburg*, *Pelzer*, *Pickens*, *Prosperity*, *Rock Hill*, *St. George*, *Salley*, *Simpsonville*, *Springfield*, *Sumter*, *Swansea*, *Timmonsville*, *Walhalla*, *Walterboro*, *West Columbia*, *West Greenville*, *West Union* and *York* there shall be no board of commissioners of public works but in said cities and towns the duties, powers and responsibilities vested in such boards in other cities and towns shall be vested in the respective city or town councils of such cities or towns except that (a) in the cities of *Marion* and *Newberry* and in the town of *Landrum* they shall be vested in the mayor and aldermen, (b) in the cities of

Myrtle Beach and Rock Hill and in the towns of *Bennettsville, Blackville, Branchville, Chesnee, Clio, Clover, Dillon, Due West, Kingstree, Lancaster, North Augusta, Prosperity, Salley, Walhalla, West Columbia, West Union, Winnsboro* and *York* they shall be vested in the mayor and city or town council or in the intendant and wardens, as the case may be, and (c) in the town of *Pickens* they shall be vested in the town council and the sinking fund commission of the town.

1942 Code §§ 7281, 7675-6, 7675-22, 7675-27, 7675-38, 7675-39; 1932 Code § 7281; Civ. C. '22 § 4431; Civ. C. '12 § 3016; Civ. C. '02 § 2009; 1896 (22) 83; 1899 (23) 50; 1900 (23) 383; 1904 (24) 403; 1907 (25) 625; 1913 (28) 48; 1915 (29) 61; 1916 (29) 826, 946; 1917 (30) 60; 1918 (30) 715, 717; 1920 (31) 716, 786; 1921 (32) 39, 196, 248; 1922 (32) 781, 789, 794, 834 986; 1923 (33) 158, 162; 1924 (33) 1062; 1925 (34) 7, 246, 265; 1926 (34) 918, 977; 1927 (35) 119, 171, 210; 1928 (35) 1143; 1929 (36) 40, 45, 49; 1930 (36) 1248, 1403; 1931 (37) 126, 196, 302; 1932 (37) 1350, 1408; 1933 (38) 466, 515; 1934 (38) 1473; 1936 (39) 1368, 1480; 1940 (41) 1815; 1942 (42) 1446, 1482; 1946 (44) 1347, 1355, 1403; 1947 (45) 296, 520, 533; 1948 (45) 1661, 2017; 1949 (46) 149; 1950 (46) 1923, 1928, 1952, 2011, 2029, 2152, 2233, 2321; 1951 (47) 364; 1952 (47) 2076; 1953 (48) 33, 39, 182, 256; 1954 (48) 1529, 1846.

Effect of amendments. — The 1952 amendment added the town of Myrtle Beach. The 1953 amendments added Blackville, Pelzer, West Columbia and York. The first 1954 amendment (1954 p. 1529) added Chesnee and the second (1954 p. 1846) added Winnsboro.

Cited in *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953). Town of *Myrtle Beach v. Suber*, _____ S. C. _____, 81 S. E. (2d) 352 (1954).

§ 59-175.1. Vacancies in Gaffney.

Notwithstanding § 59-175, when any vacancy occurs in the membership of the public works commission of the city of *Gaffney* a special election shall be held within ninety days from the date of the vacancy for the purpose of electing a member for the unexpired term. The special election shall be called by the city council and the expenses of the election shall be paid by the commissioners from the public works funds.

1953 (48) 252.

§ 59-178. Compensation of commissioners of Spartanburg.

Cited in *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

§ 59-179. Powers.

Full control and management of waterworks system is vested in commissioners. — The full control and management of the waterworks system, including the power to fix rates and to generally determine the fiscal policies to be followed, is vested in the board of commissioners. *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

And city council without power. — This section conferred upon commissioners of public works all powers necessarily incident to operation and management of water works and city council not vested with any authority or power in management thereof. *Town of Myrtle Beach v. Suber*, _____ S. C. _____, 81 S. E. (2d) 352 (1954).

And was not divested by Revenue Bond Act for Utilities. — The power to fix the

rates and otherwise handle the fiscal affairs of the waterworks system given to commissioners of public works under this section was not taken away from them by the Revenue Bond Act for Utilities, §§ 59-361 to 59-415, and vested in the city council of a municipality issuing revenue bonds under that Act. *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

So long as commissioners fulfill covenants and obligations of revenue bonds. —

If the commissioners fail or neglect to fulfill the covenants and agreements for the protection of the bondholders set forth in the ordinance authorizing the issuance of revenue bonds, the city council may enforce compliance. *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

§ 59-180. Rates and collection in Seneca.

Cited in *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

§ 59-182.1. Same; borrowing from Spartanburg metropolitan district.

This section is not special legislation of 3, § 34. *Spartanburg v. Blalock*, 223 S. the sort prohibited by S. C. Const., Art. C. 552, 75 S. E. (2d) 361 (1953).

ARTICLE 4.

*Acquisition of Lands and Condemnation Thereof.***§ 59-202. Condemnation on refusal to sell land desired.**

In case the owner of (a) any land situate within the corporate limits and desired by a municipal corporation for any of the purposes referred to in § 59-201 or (b) any land desired by such corporation for enlarging, extending or establishing a sewerage system or a water system whether within or without such corporate limits shall refuse to sell it, such municipal corporation may condemn such land in the manner provided in §§ 25-161 to 25-171.

1942 Code § 7308; 1932 Code § 7308; Civ. C. '22 § 4456; Civ. C. '12 § 3033; 1907 (25) 640; 1951 (47) 732; 1953 (48) 272.

Effect of amendment.—The amendment substituted the phrase "in §§ 25-161 to 25-171" for the former phrase "in this article."

§§ 59-203 to 59-211. Procedure for such condemnations.

Repealed by A. & J. R. 1953 (48) 272.

ARTICLE 5.

*Miscellaneous Acquisition and Condemnation Provisions.***§ 59-221. Cities and towns may acquire lands, etc., for water and electric works.**

Cities and towns may purchase and hold suitable lands and water and erect such aqueducts, dams, canals, buildings, machine shops and other works and construct and lay such conduits, mains and pipes as may be necessary to obtain and secure a supply of water and power for operating such waterworks and electric light works. And they may erect poles and wires along any of the adjacent highways and in such cities and towns and shall have the right to condemn (a) any property and lands, the drainage from which would contaminate the water supply of the city or town, (b) such streams, lakes or lands as may be required for the water supply of the city or town or (c) right of way to enable them to lay mains and pipes for water, sewerage or drainage, and erect and operate such aqueducts, dams, canals and water and electrical works and electrical lines on paying to the owner thereof just compensation for such property or rights of way to be condemned, such compensation to be determined in the manner provided in §§ 25-161 to 25-171.

1942 Code § 7293; 1932 Code § 7293; Civ. C. '22 § 4442; Civ. C. '12 § 3019; Civ. C. '02 § 2012; 1896 (22) 83; 1953 (48) 272.

Effect of amendment.—The amendment substituted the phrase "in §§ 25-161 to 25-171" for the former phrase "by law for the condemnation of lands and rights of way

by railroad corporations."

Cited in *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

§ 59-222. Condemnation of land for waterworks and to protect water sheds.

Any municipal corporation in this State desiring to establish waterworks or to enlarge or extend such works, whether it owns or operates the plant or not, may condemn lands, water rights and water privileges or any other property including existing waterworks or pipe lines, or any part thereof, necessary for the purpose of establishing, maintaining, extending or operating a waterworks plant for supplying water to such municipal corporation and to citizens thereof. But proper compensation shall be first made to the owners thereof. Such condemnation shall be made as provided in §§ 25-161 to 25-171. But no municipality shall condemn any

such waterworks during the life of any franchise granted by such municipality for the operation of such waterworks and while they are being operated under such franchise, nor when by contract there shall be any other method of valuation for the purpose of acquisition by such municipality upon the expiration of such franchise, except that such condemnation proceedings may be had during the last year of the term of such franchise to take effect by the transfer of title and possession immediately upon the expiration of such franchise. Any such corporation may also enter upon and condemn lands and tenements for the purpose of protecting the water sheds from contamination, nuisances or any condition which may be a menace to the public health, upon proper compensation being first made to the owner thereof.

1942 Code § 7302; 1932 Code § 7302; Civ. C. '22 § 4450; Civ. C. '12 § 3027; 1905 (24) 867; 1914 (28) 499; 1916 (29) 941; 1953 (48) 272.

Effect of amendment.—The amendment 25-161 to 25-171 for the procedure provided substituted the procedure provided in §§ for railroad condemnations.

§ 59-223. Procedure in such cases.

Repealed by A. & J. R. 1953 (48) 272.

§ 59-224. Drains for surface water.

Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person.

1942 Code § 7301; 1932 Code § 7301; Civ. C. '22 § 4449; Civ. C. '12 § 3026; 1902 (23) 1038; 1953 (48) 272.

Effect of amendment. — Formerly the condemnation was to be "as for highways." See now §§ 25-161 to 25-171.

This section plainly contemplates positive action by a municipality to render it liable for damages. *Hill v. Greenville*, 223 S. C. 392, 76 S. E. (2d) 294 (1953).

It creates no liability where the dam-

age resulted from highway construction and improvement carried out by the State Highway Department years before annexation of the road and land in question to the city. *Hill v. Greenville*, 223 S. C. 392, 76 S. E. (2d) 294 (1953).

Applied in *Holliday v. Greenville*, 224 S. C. 207, 78 S. E. (2d) 279 (1953).

§ 59-226. Local residents may not serve on condemnation jury.

Repealed by A. & J. R. 1953 (48) 272.

ARTICLE 6.

Municipal Utilities Generally.

§ 59-241. Construction and operation of municipal utilities.

Any city or town may:

(1) Construct, purchase, operate and maintain waterworks and electric light works within or without, or partially within and partially without, their corporate limits for the use and benefit of such city or town and the inhabitants thereof;

(2) Purchase, own, operate and maintain machinery, equipment and apparatus for generating either electricity or gas for the use and benefit of such city or town and the inhabitants thereof;

(3) Acquire existing waterworks by condemnation in the manner provided in §§ 25-161 to 25-171; or

(4) Contract for the erection of plants for waterworks, sewerage or lighting purposes, one or all, for the use of such cities and towns, and the inhabitants thereof; and

(5) Sell, convey and dispose of any and all such properties, any such sale, conveyance or disposal of an electric light plant or water system, however, to be made under the provisions of article 11 of this chapter and not under the succeeding provisions of this article.

1942 Code § 7280; 1932 Code § 7280; Civ. C. '22 § 4430; Civ. C. '12 § 3015; Civ. C. '02 § 2008; 1899 (23) 49; 1914 (28) 511; 1915 (29) 53; 1916 (29) 939; 1920 (31) 767, 797; 1922 (32) 953; 1953 (48) 272.

Effect of amendment.—The amendment substituted “in §§ 25-161 to 25-171” for the phrase “by law for railroad corporations to

acquire rights of way” in subdivision (3).

Cited in *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

ARTICLE 9.

Revenue Bond Act for Utilities.

§ 59-361. “Borrower” defined.

History and purpose of article.—See *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

Revenue Bond Act, §§ 59-361 to 59-415,

applied in *Sammons v. City of Beaufort*, S. C. _____, 83 S. E. (2d) 153 (1954).

Cited in *Wagener v. Johnson*, 223 S. C. 470, 76 S. E. (2d) 611 (1953).

§ 59-362. “Governing body” defined.

Powers of commissioners of public works not divested.—This article was intended merely to provide a convenient vehicle for the issuance of revenue bonds. It was not intended to divest boards of commissioners of public works of the powers vested in them by §§ 59-171 et seq. to fix rates and otherwise handle the fiscal affairs of a waterworks system. *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

Duties of city council are supervisory in nature.—Assuming that the term “governing body,” as used in this article, means the city council, and not the board of commissioners of public works, that body

was selected solely as an agency to comply with requirements which the article made for the protection of the bondholders. The duties imposed are only of a supervisory nature and the power given to the city council was not intended to extend beyond insuring that the covenants made by it would be performed. *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

The city council and the board of public works commissioners should be co-operative agencies in constructing or expanding a waterworks system. *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

§ 59-365. Public works authorized under article.

City mortgaging on-street parking facilities invalidated.—Covenant of city, in connection with proposed issue of revenue bonds pursuant to this article, giving bondholders lien on all parking facilities and providing that upon default a receiver may be appointed to take over and operate both on-street and off-street parking, was in-

valid so far as it pertains to on-street parking facilities, an essential governmental function, as it would have the effect of a municipality unlawfully mortgaging its streets and delegating to a court power to regulate traffic. *Sammons v. City of Beaufort*, S. C. _____, 83 S. E. (2d) 153 (1954).

§ 59-365.1. Construction and operation of natural gas system in other municipalities.

Any municipality proposing to construct and operate a natural gas system for the benefit of the municipality and its surrounding territory may also construct and operate natural gas systems in any other municipalities, regardless of the county in which situate, if lying within twenty miles of its transmission line or

main, if the governing bodies of such other municipalities give their consent thereto, upon such terms and conditions as may be agreed upon. In such circumstances, the municipality which shall undertake the construction of the natural gas system shall possess and may exercise all powers granted by this article in such other municipalities as fully and as effectually as it shall possess such powers with respect to itself. For the purpose of this article, the term '*transmission line*' shall mean the pipe lines or mains connecting the distribution system of the municipality with the source of supply of natural gas.

1954 (48) 1789.

§ 59-366. Joint projects.

Applied in *Welling v. Clinton Newberry Natural Gas Authority*, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

§ 59-371. Condemnation procedure; requirement of security.

Repealed by A. & J. R. 1953 (48) 272.

§ 59-395. Additional bonds for further improvements.

Applied in *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

§ 59-397. Rates for Service.

Authority of board of commissioners of public works to fix water rates.—See note to § 59-179.

§ 59-402. Segregation of revenues to several funds.

This article does not prohibit the board of commissioners from maintaining other accounts than those mentioned in this section or establishing on their books a surplus reserve. *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

The last sentence of this section means no more or less than the bondholders

have no further interest in the revenues derived from a project after the several funds prescribed for their benefit have been established, and any surplus revenues remaining should go where the general law requires. *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

§ 59-414. Article creates alternate method.

Applied in *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

ARTICLE 11.

Sale of Municipal Electric or Water Plant.

§ 59-441. Election to consider sale of light or water plants.

Sale of water system for less than intrinsic value thereof.—See *Babb v. Green*, 222 S. C. 534, 73 S. E. (2d) 699 (1952).

ARTICLE 12.

Extension of Water and Sewer Systems.

§ 59-462.1. Same; special provision for Cayce and Lexington.

The town council of the town of *Lexington* may extend the water lines of the town waterworks from the corporate limits of the town along Highway No. 1 and beyond the athletic stadium to a point not exceeding two miles beyond the stadium and the town council of the town of *Cayce* in *Lexington* County may extend its waterworks beyond the corporate limits of the town in any area within two miles of the present corporate limits. But this section does not authorize the town to extend its waterworks into any area comprised in the corporate limits of any other town. With respect to such lines of extension, the town councils of the towns of *Lexington* and *Cayce* shall have the same authority and powers as exercised over water lines within their respective corporate limits.

1953 (48) 151.

ARTICLE 15.

*Water, Lights and Sewerage Beyond City Limits.***§ 59-536. Furnishing water, light or sewerage disposal beyond city limits in Anderson, Kershaw, McCormick, Spartanburg and York Counties.**

All cities and towns in *Anderson, Kershaw, McCormick, Spartanburg and York* Counties owning water plants, light plants or sewage disposal systems, or any one or more of them, may, through the proper officials of the city or town, enter into contract with persons without the corporate limits to furnish such persons electric current, water or sewage disposal facilities, or any one or more of them, and, in *Anderson* County, in connection therewith, such street facilities as may be required, upon such terms, rates and charges as may be fixed by the contract or agreement between the parties to this effect, either for domestic or industrial purposes, or both, when in the judgment of the city or town council or those in charge of public works it is for the best interest of the municipality so to do. No such contract shall be for a longer period than fifty years but any such contract may be renewed from time to time for periods not exceeding fifty years.

1948 (45) 1693, 1828; 1951 (47) 2; 1954 (48) 1688, 1797.

Effect of amendment.—1954 p. 1688 first sentence. 1954 p. 1797 added Kershaw added Spartanburg County and “or those County.
in charge of public works” near end of

ARTICLE 17.

*Water Front Improvements.***§ 59-561. Cities of fifty thousand or more may condemn lands on water front.**

Whenever any city of this State having a population of fifty thousand inhabitants or more and located upon a navigable stream, whether tidal or non-tidal, shall desire to extend, improve or protect its water front for public purposes, it may acquire all private property, whether within or without such city or partly within and partly without such city, needed for such extension, improvement or protection in the same manner, as to procedure, as is provided by §§ 25-161 to 25-171, upon the payment of just compensation therefor as determined by such procedure. The right hereby conferred on any such city shall include the right to condemn in the manner aforesaid the title or possession of any and all lands, water or riparian rights, wharves, docks, warehouses, buildings, rights of way or any other property, including any property which may already have been condemned, when such property is so taken for the purpose of establishing, improving, developing, maintaining or operating the port and terminal utilities of such city for public purpose. Title thus acquired shall vest absolutely in such city. No lands so condemned shall be sold to private owners by such city.

1942 Code § 7554; 1932 Code § 7569; Civ. C. '22 § 4752; Civ. C. '12 § 3094; 1909 (26) 170; 1920 (31) 904; 1953 (48) 272.

Effect of amendment.—The amendment substituted the procedure prescribed by §§ 25-161 to 25-171 for that prescribed for the condemnation of rights of way by railroad companies.

§ 59-565. Condemnation proceedings.

Repealed by A. & J. R. 1953 (48) 272.

ARTICLE 17.1.

*Off-Street Parking Facilities Act.***§ 59-566. Citation of article.**

This article, and all statutes incorporated herein by reference, may collectively be cited as the Off-Street Parking Facilities Act.

1954 (48) 1771.

Scope of article.—This article contemplates that a municipality may establish off-street parking facilities whenever traffic conditions create a need therefor, and in the absence of a showing of any such need, and nothing appearing to the contrary, it will be presumed that local conditions are such as to justify the project. *Sammons v. City of Beaufort*, ... S. C., 83

S. E. (2d) 153 (1954).

Purpose of this article is to facilitate financing of off-street parking facilities by authorizing issuance of revenue bonds secured by pledge not only of revenue derived from project undertaken, but also that derived from on-street parking facilities. *Sammons v. City of Beaufort*, ... S. C., 83 S. E. (2d) 153 (1954).

§ 59-566.1. Definitions.

As used in this article:

(1) The term "*municipality*" shall mean any incorporated city or town in this State.

(2) The term "*Revenue Bond Act*" shall mean §§ 59-361 to 59-415.

(3) The term "*Refunding Bond Act*" shall mean §§ 59-651 to 59-682.

(4) The term "*off-street parking facilities*" shall mean motor vehicular parking facilities of all sorts, including parking lots, buildings or ramps.

(5) The term "*on-street parking facilities*" shall mean any system of parking meters, curb line or other, regulating the parking of motor vehicles on any street within the corporate limits of any municipality, requiring the payment of a charge for the right to make use of any portion of any street set apart for motor vehicle parking.

1954 (48) 1771.

Municipality may use revenue from on-street parking facilities to defray in part cost of establishing and maintaining off-

street parking facilities. *Sammons v. City of Beaufort*, ... S. C., 83 S. E. (2d) 153 (1954).

§ 59-566.2. Municipalities may establish and operate on-street parking facilities.

The right of any municipality to establish on-street parking facilities is reaffirmed and such facilities may be established and operated wherever traffic conditions in such municipality require.

1954 (48) 1771.

§ 59-566.3. May also establish and maintain off-street parking facilities; financing.

Any municipality may make provision for the construction, establishment, maintenance and improvement of off-street parking facilities, and finance or refinance the cost of such construction, establishment, maintenance and improvement, through the issuance of bonds pursuant to the Revenue Bond Act or the Refunding Bond Act.

1954 (48) 1771.

Off-street parking facility proper public function.—A municipal off-street parking facility may be properly classified as an

undertaking for a public or municipal purpose. *Sammons v. City of Beaufort*, ... S. C., 83 S. E. (2d) 153 (1954).

§ 59-566.4. Authority under Revenue Bond Act and Refunding Revenue Bond Act.

Any municipality may avail itself of all powers granted by either or both of the Revenue Bond Act or the Refunding Revenue Bond Act. In exercising the powers conferred by such acts, the municipality may make all pledges and covenants authorized by any provision thereof, and may confer upon the holders of bonds issued pursuant to either of such acts all rights and liens authorized thereby. But

in making any pledge pursuant to the Revenue Bond Act or the Refunding Revenue Bond Act, the municipality shall reserve the right to make appropriate changes in the location of any parking meters or other part of any on-street parking facilities, made necessary by street widening or street closing, and shall also reserve the right to substitute and make changes in the location of parking meters or other part of any on-street parking facilities, to provide essential and necessary traffic regulation and control, so long as any changes made pursuant to such reservations of right shall not materially lessen the amount of revenues to be derived from its on-street parking facilities.

1954 (48) 1771.

Municipality may not surrender police power by contract.—Covenant of city, in connection with proposed issue of revenue bonds pursuant to this article, to maintain during life of bonds parking meters on its streets and to charge fees sufficient to service bonds, was an ineffective attempt to barter away the police power, being

violative of fundamental principle of constitutional law that no legislative body may part with its right to exercise the police power, nor may a municipality to which such power has been delegated divest itself of same by contract or otherwise. *Sammons v. City of Beaufort*, _____ S. C. _____, 83 S. E. (2d) 153 (1954).

§ 59-566.5. Further powers of municipalities as to such bonds.

Any municipality may:

(1) Provide that any such revenue bonds be payable, both as to principal and interest, from such portions of the revenues of either or both of its off-street parking facilities and its on-street parking facilities, as the municipality shall prescribe in the proceedings adopted in the issuance of bonds pursuant to this article.

(2) Covenant and agree that upon it being adjudged in default as to the payment of any installment of principal or interest upon any bond issued by it, or in default as to the performance of any covenant or undertaking made by it, that in such event, the principal of all bonds of such issue may be declared forthwith due and payable, notwithstanding that any of them may not have then matured.

(3) Confer upon a corporate trustee the power to make disposition of the proceeds from all borrowings and also of all revenues derived from the operation of either or both of its off-street parking facilities and its on-street parking facilities, in accordance with and in the order of priority prescribed by the proceedings adopted by the municipality as an incident to the issuance of any bonds.

(4) Dispose of its bonds at public or private sale and upon such terms and conditions as it shall approve.

(5) Make such provision for the redemption of bonds issued by it prior to their stated maturity, with or without premium, and on such terms and conditions as the municipality shall approve.

(6) Covenant and agree that any cushion fund established to further secure the payment of the principal and interest of any bonds shall be in a fixed amount.

(7) Covenant and agree that no free service will be furnished to any person, firm, corporation, municipal corporation or any sub-division or division of the State or limit the conditions under which free service may be made available.

(8) Prescribe the procedure, if any, by which the terms of the contract with the holders of its bonds may be amended, the number of bonds whose holders must consent thereto and the manner in which such consent shall be given.

(9) Prescribe the events of default and the terms and conditions upon which all or any bonds shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived.

1954 (48) 1771.

Municipality may use revenue from on-street parking facilities to defray in part cost of establishing and maintaining off-

street parking facilities. *Sammons v. City of Beaufort*, _____ S. C. _____, 83 S. E. (2d) 153 (1954).

Covenants of city in bond issue valid as to off-street parking facilities.—Covenants of city, in connection with proposed issue of revenue bonds pursuant to this article, to put into effect, and keep in force during life of bonds, charges for both off-street and on-street parking sufficient to produce revenues necessary to service bonds, to provide a cushion fund therefor, to operate and maintain all of its parking facilities, and to provide appropriate sums for depreciation and contingencies, are valid in so far as they relate to off-street parking facilities. *Sammons v. City of Beaufort*, ... S. C., 83 S. E. (2d) 153 (1954).

But invalid as to on-street parking facilities.—Covenant of city, in connection with proposed issue of revenue bonds pursuant to this article, giving bondholders lien on all parking facilities and providing that upon default a receiver may be appointed to take over and operate both on-street and off-street parking, was invalid so far as it pertains to on-street parking facilities, an essential governmental function, as it would have the effect of a municipality unlawfully mortgaging its streets and delegating to a court power to regulate traffic.

Sammons v. City of Beaufort, ... S. C., 83 S. E. (2d) 153 (1954).

Revenue from on-street and off-street parking facilities not exceeding amount necessary for regulation and maintenance, not invalid.—On-street parking and parking lot facilities are interrelated and constitute a uniform parking system, and so long as total revenue received from both does not substantially exceed that necessary to defray expenses incident to regulation of parking, including acquisition and improvement of off-street parking facilities and provision for a cushion fund and contingencies, there is no violation of rule that police power cannot be used to raise revenue. *Sammons v. City of Beaufort*, ... S. C., 83 S. E. (2d) 153 (1954).

Covenant of city to keep in effect criminal ordinance invalid.—Covenant of city, in connection with proposed issue of revenue bonds pursuant to this article, to keep in effect an ordinance making it a criminal offense to violate parking regulations, is invalid, as no city council may be empowered to enact any kind of criminal ordinance and make it irrevocable. *Sammons v. City of Beaufort*, ... S. C., 83 S. E. (2d) 153 (1954).

CHAPTER 4.

DISTRICTS FOR CERTAIN PUBLIC WORKS.

Sec.
59-609.1. Counties of 41,000 to 43,000, 1950 census, may furnish services outside of district.

§ 59-601. Authority to establish.
Cited in *Detreville v. Groover*, 219 S. C. 313, 65 S. E. (2d) 232 (1951).

§ 59-609.1. Counties of 41,000 to 43,000, 1950 census, may furnish services outside of district.

In counties having a population between forty-one thousand and forty-three thousand according to the 1950 census, such boards of commissioners may provide water, sewerage and fire protection to citizens outside of such districts in those counties or adjacent counties and charge such rates therefor as they may fix, which may be more but not less than the rates charged citizens of such districts for similar services and facilities.

1952 (47) 2026.

CHAPTER 5.

THE REVENUE BOND REFINANCING ACT OF 1937.

Sec.
59-653. Refinancing or issuing additional bonds.

Sec.
59-656. Terms and form of refunding bonds.

§ 59-651. Short title.
Cited in *Welling v. Clinton Newberry Natural Gas Authority*, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

§ 59-653. Refinancing or issuing additional bonds.

Any municipality may refinance or refinance and improve any enterprise and for such purpose may borrow money and issue refunding bonds from time to time. Any municipality which shall have outstanding bonds issued pursuant to this chapter and which shall have, in the resolution authorizing such bonds, reserved the right to issue additional bonds, payable in whole or in part from the revenues of the enterprise, may issue such additional bonds pursuant to and in accordance with the provisions of this chapter, notwithstanding that the proceeds of such additional bonds be used solely for the improvement of the enterprise.

1942 Code § 9288; 1937 (40) 313; 1953 (48) 71.

Effect of amendment.—The amendment added the second sentence.

§ 59-656. Terms and form of refunding bonds.

The refunding bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, nor in any event exceeding forty years from their respective dates, may bear such rate or rates of interest as the governing body shall determine, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions and may contain such other terms and covenants as may be provided by resolution of the governing body of the municipality. Notwithstanding the form or tenor thereof and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

1942 Code § 9290; 1937 (40) 313; 1952 (47) 1715.

Effect of amendment. — Formerly the rate of interest payable on such refunding bonds was limited to “the maximum rate of interest borne by the notes, bonds or other obligations refinanced thereby.”

Title 60.

Registration and Recordation.

- Chap. 1. Registers of Mesne Conveyances, §§ 60-5 to 60-5.1.
 5. Plats, Blue Prints, Photostatic Copies, etc., §§ 60-202 to 60-205.
 7. Chattel Mortgages, § 60-307.
 9. Veterans' Discharges, § 60-404.

CHAPTER 1.

REGISTERS OF MESNE CONVEYANCES.

Sec.
60-5. Vacancy in Greenville County.

Sec.
60-5.1. Vacancy in Charleston County.

§ 60-5. Vacancy in Greenville County.

In case of any vacancy in the office of register of mesne conveyances in *Greenville* County the auditor of the county shall take charge of the office and all papers therein and discharge the same duties, receive the same fees or salary and be subject to the same liability as is by law provided for a register of mesne conveyances,

until a register of mesne conveyances shall be elected and commissioned for such county.

1942 Code § 3637; 1932 Code § 3639; Civ. C. '22 § 2183; Civ. C. '12 § 1359; Civ. C. '02 § 952; 1893 (21) 400; 1908 (25) 1021; 1914 (28) 483; 1954 (48) 1474.

Effect of amendment.—The amendment eliminated Charleston County.

§ 60-5.1. Vacancy in Charleston County.

In case of any vacancy in the office of register of mesne conveyances in *Charleston* County the office shall be filled by the calling and conducting of a special election by the Charleston County election commissioners within thirty days after such vacancy occurs. Until the vacancy is filled, the deputy register of mesne conveyances shall act as register of mesne conveyances for the county.

1954 (48) 1474.

CHAPTER 2.

RECORDING GENERALLY.

§ 60-51. Affidavit prerequisite for recording.

Object of probate requirement.

In accord with paragraph under this catchline in Code. See *Seale Motor Co. v. Stone*, 218 S. C. 373, 62 S. E. (2d) 824, 25 A. L. R. (2d) 1118 (1950).

Cited in *McDonald v. Welborn*, 220 S. C. 10, 66 S. E. (2d) 327 (1951); *United States v. Anders Contracting Co.*, 111 F. Supp. 700 (1953).

§ 60-54. Special provision for duration of war.

Editor's note.—It would appear that more than six months have elapsed since the termination of "the present war" and

that consequently this provision is no longer in effect.

CHAPTER 3.

WHEN RECORDATION ESSENTIAL TO VALIDITY.

§ 60-101. Conveyances, etc., valid as to purchasers, etc., only when recorded.

I. GENERAL CONSIDERATION.

The property rights of the seller under a conditional sales contract were superior to tax liens filed by the federal government against the property of the conditional buyer, of which liens one was filed before the conditional sale and one was filed after the sale and before the conditional sales contract was recorded. *United States v. Anders Contracting Co.*, 111 F. Supp. 700 (1953).

III. NOTICE.

Purchaser of personal property, although in good faith, takes subject to lien of recorded mortgage.—A person, having constructive notice of properly recorded chattel mortgage, who purchases mortgaged personal property from one not authorized to sell it, takes property subject to lien of mortgage, and may be held for conversion thereof, regardless of fact that he was honestly mistaken, or acted innocently, in good faith, and without knowledge of seller's right to make sale. *United States v. Brabham*, 122 F. Supp. 570 (1954).

CHAPTER 5.

PLATS, BLUE PRINTS, PHOTOSTATIC COPIES, ETC.

Sec.

60-202. Same; in all counties.

Sec.

60-205. Same; special requirements for Charleston County.

§ 60-202. Same; in all counties.

Photostatic copies or photo recording copies, duly authenticated by the signature of the clerk of court or other proper official charged with the duty of recording legal papers in any county in this State, shall be sufficient compliance with the law with reference to the recording of all legal papers. Such recording shall have all of the legal incidents and effect otherwise provided by the recording laws of

this State and copies of legal papers so recorded shall be admissible in evidence as such record.

1946 (44) 1525; 1953 (48) 225.

Effect of amendment. — The section ing a city of over 60,000 population and the formerly applied only to counties contain- second sentence is new.

§ 60-205. Same; special requirements for Charleston County.

In *Charleston County* no plats shall be recorded in the office of the register of mesne conveyances unless: (1) a true copy on tracing cloth and one blue or white print are furnished at the time of recording; (2) the plat, or each separately filed section of any larger plat, does not exceed twenty-two inches by thirty-four inches; and (3) a filing fee of one dollar for the first one hundred seventy-six square inches plus one dollar for each additional one hundred square inches or fraction thereof is first paid to the register of mesne conveyances. All such fees paid to the register of mesne conveyances shall be paid over by him to the county treasurer of *Charleston County* in due course.

1942 Code § 8875-3; 1934 (38) 1503; 1936 (39) 1345, 1589; 1953 (48) 126.

Effect of amendment.—The amendment rewrote the section.

CHAPTER 7.

CHATTEL MORTGAGES.

Sec.

60-307. Mortgages of public service corporations excepted.

§ 60-307. Mortgages of public service corporations excepted.

Nothing contained in §§ 60-305 and 60-306 shall be construed to apply to any mortgage or similar instrument executed by any public service corporation or to any mortgage or similar instrument given to secure any indebtedness to the United States of America, or any agency or instrumentality thereof, incurred under the Rural Electrification Act of 1936, as amended.

1942 Code § 8880; 1932 Code § 8880; 1928 (35) 1268; 1953 (48) 111.

Effect of amendment.—The amendment ing to mortgages to secure the United added the latter part of the section relat- States, etc.

CHAPTER 9.

VETERAN'S DISCHARGES.

Sec.

60-404. Same; special provision for Chesterfield County.

§ 60-404. Same; special provision for Chesterfield County.

The clerk of court of *Chesterfield County* shall, upon the request of a veteran have the armed forces discharge of veterans of World War II and the Korean War photostated and shall record such photostatic copy in a proper record book. The cost of such photostatic copies in *Chesterfield County* shall be paid upon the warrant of the governing body of the county out of the general funds of the county.

1946 (44) 2506; 1952 (47) 1695.

Effect of amendment.—The amendment added Korean War discharges.

Title 61-1.**Retirement Systems.**

Chap. 1. South Carolina Retirement System. §§ 61-33 to 61-55.

1.1. Minimum Allowance for Certain State Employees and Teachers, § 61-211, 61-212.

2. Retirement of Supreme Court Justice and Circuit Court Judges, § 61-256.

6. Miscellaneous Local Provisions, §§ 61-600, 61-601.

CHAPTER 1.**SOUTH CAROLINA RETIREMENT SYSTEM.**

Article 3.
Membership in System.

Sec.
61-33. Employment between April 26 1945
and December 31 1952.

Article 4.
Creditable Service.

Sec.
61-51. Claims for prior service.
61-54. Contributions for prior service.
61-55. Persons who came into System
after first electing not to do so.

ARTICLE 1.*General Provisions.***§ 61.1. Definitions.**

Editor's Note.—The word "Retirement" in paragraphs (22), (23) and (24) should have been deleted.

§ 61-5. Possible revision for Federal Social Security.

Cross reference.—See §§ 50-251 et seq. for coverage of public employees under Federal Social Security, Act.

ARTICLE 2.*Administration.***§ 61-19. Rules and regulations.**

Cross reference.—For rules and regulations promulgated under authority of this section, see Rules and Regulations, Budget and Control Board, in Volume 7.

ARTICLE 3.*Membership in System.***§ 61-33. Employment between April 26 1945 and December 31 1952.**

All persons who were teachers or State, county or municipal employees on April 26 1945, or who became such after said date but on or before December 31 1952, except those specifically excluded under § 61-35 and the persons permitted to exercise the option under §§ 61-39 to 61-41, became members as of July 1 1945, or as of the date of last employment, if later, unless on or before December 31 1948 they filed with the Board on a form prescribed by the Board a notice of their election not to be covered in the membership of the System and a duly executed waiver of all present and prospective benefits which would otherwise inure to them on account of their participation in the System.

1945 (44) 212; 1949 (46) 424; 1950 (46) 2170, 2369; 1951 (47) 172, 213; 1952 (47) 2094.

Effect of amendment.—The date of December 31 1952 was formerly December 31 1951.

ARTICLE 4.*Creditable Service.***§ 61-51. Claims for prior service.**

Under rules and regulations adopted by the Board, each member who was a teacher or employee at any time prior to July 1 1945 and who became a member

on or before December 31 1952 was required to file a detailed statement of all service as a teacher or employee rendered by him prior to July 1 1945 for which he claimed credit.

1945 (44) 212; 1949 (46) 424; 1950 (46) 2170; 1951 (47) 172, 213; 1952 (47) 2094.

Effect of amendment.—The date of December 31 1952 was formerly December 31 1951.

§ 61-54. Contributions for prior service.

All counties, municipalities or other political subdivisions of the State, any agencies and departments thereof including school boards and any service organization as defined in item (4) of § 61-1 which availed themselves of the provisions of § 61-37 on or before December 31 1952 did so without loss or prejudice to their affected employees' or teachers' claims to prior service credits but such electing employers and their employees or teachers shall be subject to the payment of such contributions, if any, as the Board may determine to be necessary to avoid any possible discrimination as against employers and employees or teachers coming under the terms hereof at an earlier date. But the compensation received by the employees of such service organizations shall be provided from moneys paid by the members as dues or otherwise or from funds derived from public sources. The employee contributions prescribed by this Title shall be paid from the fund of the service organization.

1949 (46) 424; 1952 (47) 2094.

Effect of amendment.—The date of December 31 1952 was formerly December 31 1951 and the last two sentences are new.

§ 61-55. Persons who came into System after first electing not to do so.

Any teacher or employee who had previously elected not to become a member of the System but withdrew such election and became a member on or before December 31 1952 did so with all prior service credits preserved but subject to the payment of such contributions, if any, as the Board determined to be necessary to avoid any possible discrimination as against teachers and employees who came under the terms of this chapter at an earlier date.

1952 (47) 2094.

ARTICLE 7.

Retirement and Retirement Benefits.

§ 61-104. Disability retirement.

Editor's Note.—The word "Retirement" in the third line should have been deleted.

CHAPTER 1.1.

MINIMUM ALLOWANCE FOR CERTAIN STATE EMPLOYEES AND TEACHERS.

Sec.

61-211. Sixty dollars per month allowance for certain State employees and teachers.

Sec.

61-212. Same; retirement before July 1, 1945.

§ 61-211. Sixty dollars per month allowance for certain State employees and teachers.

Any public school teacher or State employee who has retired or who may retire under the provisions of the South Carolina Retirement Act while in service as such teacher or employee and who has (a) attained age sixty-five and has twenty-five or more years of creditable service or (b) thirty-five or more years of creditable service regardless of age shall be paid from the general funds of the State a monthly sum, in addition to the retirement allowance he may receive under said act, to provide him a minimum of sixty dollars per month. But should such teacher

or employee elect to receive a reduced retirement allowance as provided in the said act, then he shall be paid under the provisions of this section only such amount as would be paid under this section had he not elected such optional allowance.

1954 (48) 1524.

Editor's Note.—See §§ 61-1 et seq. for South Carolina Retirement System.

Ineligibility.—A teacher who would reach age 65 in August, who completed a scholastic term in May preceding her 65th birthday, and who applied for retirement benefits commencing July 1, with thirty years' service, does not qualify under terms of this section and is ineligible to receive benefits hereunder. Atty. Gen. Op., Apr. 27, 1954.

This section is sufficient to appropriate funds from the general treasury of the State if there are any surplus funds or funds which have not been allocated to some

other purpose. Atty. Gen. Op., Mar. 29, 1954.

Appropriation made by this section.—When the Director of the Retirement System makes known to the Comptroller-General and the Treasurer the funds needed monthly to meet requirements of the Retirement System, plus the additional amounts provided for by this section, these officials will be authorized and directed to set up the same in the proper Retirement accounts, and the increased amounts under this section will be payable beginning with monthly payment following Mar. 12, 1954. Atty. Gen. Op., Mar. 29, 1954.

§ 61-212. Same; retirement before July 1, 1945.

Any public school teacher or State employee, who retired prior to July 1 1945 in service at the age of sixty-five with twenty-five or more years of service in the employ of the State, shall be eligible for the minimum allowance of sixty dollars per month for the remainder of his life, such benefits to be paid from the general funds of the State.

1954 (48) 1524.

CHAPTER 2.

RETIREMENT OF SUPREME COURT JUSTICE AND CIRCUIT COURT JUDGES.

Sec.

61-256. Retirement pay and payment thereof.

§ 61-256. Retirement pay and payment thereof.

A chief justice or any justice or judge, resigning or retiring under the provisions of this chapter or who has heretofore resigned or retired, shall receive each year for the balance of his life the amount of seven thousand two hundred dollars, and the State Treasurer shall pay out of the funds in the State Treasury, on the warrant of the official authorized to approve payments of warrants for the salaries of the justices or judges, the amount provided herein.

1945 (44) 185; 1953 (48) 504.

Effect of amendment.—The amendment increased the retirement salary from \$3,000 annually for the balance of his life to \$7,200

for the balance of his life and made other minor changes.

CHAPTER 3.

INSURANCE AND ANNUITY BENEFITS OF PEACE OFFICERS.

§ 61-316. Disability benefits.

Quoted in *Johnson v. Board of Com'rs*, 221 S. C. 23, 68 S. E. (2d) 629 (1952).

§ 61-320. Proration of benefits when they cannot be paid in full.

Quoted in *Johnson v. Board of Com'rs*, 221 S. C. 23, 68 S. E. (2d) 629 (1952).

§ 61-321. Disbursements; Board's decision final.

Board cannot nullify or vary judgment ordering disability payments.—This section gives the Board control of "all payments to be made from such funds," but that does not mean that a stipulation en-

tered into by counsel of record resulting in an order and judgment of a court that the Board pay a disabled officer monthly disability payments in a specified amount so long as his disability should continue

could be nullified or varied by the Board, and such judgment was res judicata in a subsequent action brought by the officer against the board involving the amount of

the payments. *Johnson v. Board of Com'rs*, 221 S. C. 23, 68 S. E. (2d) 629 (1952).

§ 61-322. Benefits subject to legislative changes.

Quoted in *Johnson v. Board of Com'rs*, 221 S. C. 23, 68 S. E. (2d) 629 (1952).

CHAPTER 4.

FIREMEN'S PENSION FUNDS IN CERTAIN CITIES.

ARTICLE 3.

Other Cities.

§ 61-394. When person thirty-five when employed eligible for pension.

Editor's note. — The word "before" "since" and "be" in the fourth line in the should be inserted between the words section in the Code.

CHAPTER 6.

MISCELLANEOUS LOCAL PROVISIONS.

Sec.	Sec.
61-600. Retirement benefits of employees in employment of Dillon County for forty years.	61-601. [Repealed.]

§ 61-600. Retirement benefits of employees in employment of Dillon County for forty years.

Any employee of *Dillon* County who has forty or more years of continuous service in the employ of the county, whether the office or position he holds is filled by appointment or by election, shall be retired at full pay upon the expiration of the term of office during which he completes his fortieth year of continuous service; or, if he so desires, any such employee may retire at full pay at any time after the completion of his fortieth year of continuous service. In the event of the death of any such employee, whether before or after his retirement, the surviving spouse, if any, of such employee shall be paid compensation at one-half the rate to which such employee would have been entitled. Such compensation shall be paid until the death or re-marriage of such surviving spouse. The benefits provided for in this section shall be paid from the general fund of *Dillon* County, and all such benefits shall be in addition to any other benefits provided by any other law or retirement plan.

1954 (48) 2088.

§ 61-601. Retirement of certain officers of Jasper County.

Repealed by A. & J. R. 1952 (47) 2033.

Title 63.

Soil Conservation and Improvement.

Chap. 2. Soil Conservation Districts Law, § 63-61.2.

3. Local Provisions, §§ 63-221 to 63-471.

CHAPTER 2.

SOIL CONSERVATION DISTRICTS LAW.

Article 2.

State Soil Conservation Committee.

Sec.

63-61.2. Advisors to committee.

ARTICLE 2.

State Soil Conservation Committee.

§ 63-61.2. Advisors to committee.

The following shall serve ex officio in an advisory capacity to the State Soil Conservation Committee: the Director of the State Agricultural Extension Service, the Director of the South Carolina Agricultural Experiment Station, the President of The Clemson Agricultural College of South Carolina, the State Forester, the State Supervisor of the State Department of Vocational Agriculture, the head of the State Game and Fish Department, the Director of the State Development Board, the Commissioner of Agriculture and, with the concurrence of the Secretary of the United States Department of Agriculture, the State conservationist of the Soil Conservation Service, the Chairman of the Purchasing and Marketing Administration State Committee and the Director of the Farmers' Home Administration.

1951 (47) 431; 1954 (48) 1745.

Effect of amendment.—The amendment search and Development Board to State changed South Carolina Planning, Re- Development Board.

CHAPTER 3.

LOCAL PROVISIONS.

Article 2.

Cherokee County Agricultural Extension Board.

Sec.

63-221. [Repealed.]

63-222. Chairman and treasurer.

63-223. Duties and powers.

63-224. Authorization of purchases.

63-225. Contracts for terracing, etc.

Article 11.

Soil Improvement and Development Commission, Lexington County.

Sec.

63-341 to 63-347. [Repealed.]

Article 19.

Terracing Commission, York County.

63-461 to 63-471. [Repealed.]

ARTICLE 2.

Cherokee County Agricultural Extension Board.

§ 63-221. Appointment, term and compensation.

Repealed by A. & J. R. 1954 (48) 1442.

§ 63-222. Chairman and Treasurer.

Amended by A. & J. R. 1954 (48) 1442.

§ 63-223. Duties and powers.

Amended by A. & J. R. 1954 (48) 1442.

§ 63-224. Authorizations of purchases.

Amended by A. & J. R. 1954 (48) 1442.

§ 63-225. Contracts for terracing, etc.

Amended by A. & J. R. 1954 (48) 1442.

ARTICLE 11.

*Soil Improvement and Development Commission, Lexington County.***§§ 63-341 to 63-347. Soil improvement and development commission, Lexington County.**

Repealed by A. & J. R. 1953 (48) 328.

ARTICLE 19.

*Terracing Commission, York County.***§§ 63-461 to 63-471. Appointment; report on finances.**

Repealed by A. & J. R. 1954 (48) 1790.

Title 64.**Sundays, Holidays and Other Special Days.**

Chap. 1. Sundays, §§ 64-4 to 64-5.1.

4. Legal Holidays, § 64-152.1.

CHAPTER 1.

SUNDAYS.

Sec.	Sec.
64-4. Employment in textile plants on Sunday.	64-5. Employment of children or women in mercantile or manufacturing establishments on Sunday.
64-4.1. Same; during times of national emergency in plants producing goods for defense.	64-5.1. Exemption of textile plants in Bennettsville; hours of work, etc.

§ 64-1. Public sports prohibited on Sunday.

The terms of this section prohibit the holding of a stock car meet or race on Sunday. Bishop v. Hanna, 218 S. C. 474, 63 S. E. (2d) 308, 24 A. L. R. (2d) 808 (1951).

§ 64-2. Penalty for working on Sunday.

Cited in Bishop v. Hanna, 218 S. C. 474, 63 S. E. (2d) 308, 24 A. L. R. (2d) 808 (1951).

§ 64-4. Employment in textile plants on Sunday.

It shall be unlawful for any person owning, controlling or operating any textile manufacturing, finishing, dyeing, printing or processing plant to request, require or permit any regular employee to do, exercise or perform any of the usual or ordinary worldly labor or work in, of, about or connected with such employee's regular occupation or calling or any party thereof in or about such textile manufacturing, finishing, dyeing, printing or processing plant on Sunday, work of absolute necessity or emergency and voluntary work in certain departments which is essential to offset or eliminate a processing bottleneck or to restore a balance in processing operations and maintain a normal production schedule excepted, and then only upon condition that such employee be paid on the basis of one and one-half the amount of the usual average day wage or salary earned by such employee during other days of the week. But this section shall not be construed to apply to watchmen, firemen and other maintenance and custodial employees. The term "regular employee" as used in this section shall be construed to mean any person who usually or ordinarily works as much as eight hours per week or more in any such textile manufacturing, finishing, dyeing, printing or processing plant, whether

employed and paid by the job, by the piece, by the hour or on a salary basis. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

1942 Code § 1735-1; 1937 (40) 528; 1939 (41) 313; 1954 (48) 1717.

Effect of amendment.—The amendment changed “twenty hours” to “eight hours” excepted certain voluntary work and in the definition of “regular employee”.

§ 64-4.1. Same; during times of national emergency in plants producing goods for defense.

During times of national emergency the Commissioner of Labor shall issue permits to industries regulated by § 64-4 permitting such industries to operate on Sunday when sufficient proof is furnished to the Commissioner that the industries are engaged in producing or processing goods for national defense purposes and under government contract. But no employee shall be required to work on Sunday who is conscientiously opposed to Sunday work and if any employee should refuse to work on Sunday on account of conscientious or physical objections he shall not jeopardize his seniority rights by such refusal or be discriminated against in any other manner. Nothing herein contained shall be taken to authorize the production or processing on Sunday of goods other than those being produced or processed for national defense purposes under government contract.

1953 (48) 241.

§ 64-5. Employment of children or women in mercantile or manufacturing establishments on Sunday.

It shall be unlawful for any person to employ, require or permit the employment of women or children to work or labor in any mercantile establishment or manufacturing establishment on Sunday except that women shall be permitted to work on Sunday during times of national emergency when they are employed by industries engaged in producing or processing goods for national defense and under government contracts in the same manner and under the same conditions as otherwise provided by law. But no woman shall be permitted to work in the manner herein provided unless and until the industries engaged in producing goods for national defense purposes and under government contract have first submitted to the Department of Labor proof sufficient to establish their national defense status, whereupon the Commissioner of Labor is directed to issue a permit authorizing the employment of women on Sunday, subject, however, to other conditions and circumstances provided by law. But no employee shall be required to work on Sunday who is conscientiously opposed to Sunday work and if any employee should refuse to work on Sunday on account of conscientious or physical objections he shall not jeopardize his seniority rights by such refusal or be discriminated against in any other manner. This section shall not apply to those manufacturing establishments described in § 64-6.

1953 (48) 242.

Effect of amendment.—The amendment added the foregoing paragraph. The original section, now constituting the first paragraph of the amended section, was not affected by the amendment and is therefore not set forth above.

§ 64-5.1. Exemption of textile plants in Bennettsville; hours of work, etc.

The provisions of §§ 64-2 to 64-5 shall not apply to textile manufacturing establishments or employees thereof in any city having an exact population of five thousand one hundred and forty, according to the latest official United States census. But no textile manufacturing establishment or its employees shall commence operation or begin a work day or work shift before the hour of ten o'clock p. m. on any Sunday. Under this section a work week in excess of forty hours and a work day

in excess of eight hours shall not be permissible except when the provisions of the Fair Labor Standards Act are complied with.

1953 (48) 389.

CHAPTER 4.

LEGAL HOLIDAYS.

Sec.

64-152.1. May declare Thursday of State fair week holiday in Berkeley, Colleton and Dorchester Counties.

§ 64-152.1. May declare Thursday of State fair week holiday in Berkeley, Colleton and Dorchester Counties.

The county supervisor, the town council of any municipality, and the board of directors of any bank or cash depository in *Berkeley, Colleton* and *Dorchester* Counties may, upon one publication of notice fifteen days in advance in a newspaper of general circulation in the county, declare Thursday of State fair week a legal holiday concerning the conduct of its business.

1954 (48) 1547.

Title 65.

Taxation.

Chap. 1. General Provisions, § 65-41.

2. South Carolina Tax Commission, §§ 65-70.1 to 65-70.7.

5. Income Tax Act of 1926, §§ 65-252.1 to 65-341.

7. Inheritance Tax, § 65-464.

9. License Fees of Corporations, §§ 65-601 to 65-640.

10. Certain Stamp and Certain Business License Taxes, §§ 65-654.1 to 65-835.

11. Other Business License Taxes, § 65-902.

13. Tax on "Fuel," § 65-1220.

15. Retail License, Sales and Use Taxes, §§ 65-1361.1 to 65-1430.

16. The Assessment of Property Taxes, §§ 65-1508 to 65-1878.1.

17. County Treasurers and the Collection of Taxes, §§ 65-1960.1 to 65-2026.

18. Tax Collectors, §§ 65-2207 and 65-2551.1.

19. Erroneous Assessments and Payments, § 65-2661 to 65-2662.

20. Enforced Collection of Taxes, §§ 65-2708 to 65-2710.

21. Forfeited Lands, §§ 65-3101 to 65-3104.

CHAPTER 1.

GENERAL PROVISIONS

Sec.

65-4.1. Tax exempt status of public bonds, notes and certificates of indebtedness.

§ 65-4.1. Tax exempt status of public bonds, notes and certificates of indebtedness.

The term "*bonds*" as herein used shall apply to general obligation bonds and bonds payable wholly or in part from any special fund or from the revenues of any project or undertaking of the issuer.

Both the principal and interest of all bonds, notes and certificates of indebtedness, heretofore or hereafter issued, by or on behalf of the United States Government and by or on behalf of the State, any authority, agency, department or

institution of the State, any county, school district, municipality, division or subdivision of the State or any agency thereof shall be exempt from all State, county, municipal, school district and other taxes or assessments, direct or indirect, general or special, and whether imposed for the purpose of general revenue or otherwise. This exemption shall extend to all recipients of all interest paid thereon, whether paid directly or paid indirectly through a trustee, guardian or other fiduciary, except inheritance, estate, or transfer taxes.

The provisions of this section except as to obligations issued by or on behalf of the United States Government shall be deemed an obligation of the contract made between the issuer of the bonds, notes or certificates of indebtedness, the purchasers thereof and all holders thereof.

1952 (47) 1878.

CHAPTER 2.

SOUTH CAROLINA TAX COMMISSION.

Sec.	Sec.
65-70.1. Additional authority of commission to enforce collection of taxes.	65-70.5. Additional execution or warrant costs.
65-70.2. Attachment and levy on intangible.	65-70.6. Payment of cost of clerk of court.
65-70.3. Seizure, storage and sale.	65-70.7. Sections 65-70.1 to 65-70.6 cumulative.
65-70.4. Deposit and disbursement of proceeds or collections.	

§ 65-70.1. Additional authority of commission to enforce collection of taxes.

All the duties and powers imposed or conferred by law upon sheriffs or tax collectors of any county in this State with respect to the collection of any amounts due the Commission are hereby imposed or conferred upon the Commission or its duly authorized representatives. Such portions of the law as have to do with the collection of unpaid taxes, penalties, interest or costs and the attachment, levy and sale of properties for the purpose of enforcing the payment of such amounts which may be due the Commission are hereby imposed or conferred upon the Commission or its duly authorized representatives. The Commission, or its duly authorized representatives, shall in all respects and with like effect proceed upon the property and rights to property, both real and personal, as is provided by law with respect to sheriffs or tax collectors.

1954 (48) 1566.

Editor's note.—Sections 65-70.1 to 65-70.6 are cumulative.

§ 65-70.2. Attachment and levy on intangible.

Notwithstanding any other provision of law, the Commission, or its duly authorized representatives, may attach, levy upon or seize bank deposits and all other choses in action, except for salaries and wages, on property incapable of manual levy or delivery, hereinafter called intangible, belonging, owing or to become due to any taxpayer, subject to any provisions of any tax or license law of which the administration, enforcement and collection is imposed upon the Commission. The person owning such intangible, matured or unmatured, or having the same in possession or control, shall become liable for all sums due by the taxpayer to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer, subject to the set-off of any matured or unmatured indebtedness of a taxpayer to such person. To effect such attachment or levy, the Commission, or its duly authorized representative, shall serve or cause to be served upon the taxpayer and upon such person notice of such attachment and levy which notice may be served by any authorized representative of the Commission, or by any officer having authority to serve summonses.

1954 (48) 1566

§ 65-70.3. Seizure, storage and sale.

The Commission, or its duly authorized representative, when personal property is levied upon and seized in order to enforce payment of amounts due the Commission, including costs, shall take such steps as may be necessary to protect and preserve the property so seized. The sheriff of each county shall provide appropriate and proper space to protect any personal property so seized. In the event that storage space is not available to the sheriff, the Commission shall rent such space as may be necessary to protect the seized property until such property may be sold or redeemed. The cost of such storage, advertising, sale and any other direct costs in connection with such seizure and sale shall be paid by the State Treasurer on proper warrant from the Commission from any funds arising out of any taxes with respect to which the Commission is charged with the administration, enforcement and collection.

1954 (48) 1566.

§ 65-70.4. Deposit and disbursement of proceeds or collections.

The Commission shall deposit the total proceeds of seizure and sale or collections under warrants or tax executions to the credit of the appropriate account with the State Treasurer. Costs authorized in § 65-70.5, together with the costs of storage, advertising and sale, shall be deducted from proceeds of sale before any other prior liens or claims are paid. And the Commission shall, after deducting such costs and expenses, remit to the clerk of the court of the county the amount of prior liens or claims, if any, against the property seized and sold. Such remittance shall be made by appropriate voucher by the State Treasurer issued upon proper warrant of the Commission.

1954 (48) 1566.

§ 65-70.5. Additional execution or warrant costs.

Notwithstanding any other provision of law, there shall be added as costs to each warrant or tax execution collected, served or recorded by a duly authorized representative of the Commission an amount equivalent to five percent of the total of the warrant or tax execution, or the sum of three dollars, whichever is the greater, and, in addition thereto, the sum of two dollars.

1954 (48) 1566.

§ 65-70.6. Payment of cost of Clerk of Court.

Fees charged by clerks of court for the recording and satisfaction of warrants for distraint or tax executions issued by the Commission shall be paid by the State Treasurer on proper warrant from the Commission from funds appropriated therefor by the General Assembly.

1954 (48) 1566.

§ 65-70.7. Sections 65-70.1 to 65-70.6 cumulative.

The provisions of §§ 65-70.1 to 65-70.6 shall be complementary to and in addition to any other provision of law.

1954 (48) 1566.

CHAPTER 5.

INCOME TAX ACT OF 1926.

Article 4.

Article 9.

Gross and Net Income; Deductions.

Sec.

Payment, Collection and Use of Tax.

65-252.1. When alimony payments income; when deductions.

65-253. Items not included in gross income.

Article 5.

Gain or Loss and Basis Therefor.

65-271.1. Gain on sale of principal residence when new one purchased; adjustment of basis.

65-341. When tax payable; installment payments.

ARTICLE 4.

Gross and Net Income; Deductions.

§ 65-251. Gross income defined.

Transaction constituting payment of taxable dividends.—Where, in order to insulate property of a corporation from liability for damages incurred in the operation of the business, the stockholders formed another corporation, and the old corporation conveyed to the new the most or all of its real estate, and the shares of the new corporation were issued to the individual stockholders of the old corpora-

tion separately and in the same proportions and without consideration, the transferred real estate represented surplus of the old corporation and the issuance to the stockholders of shares in the new corporation was the equivalent of the payment of taxable dividends by the old corporation. *Wilson v. South Carolina Tax Comm.*, 220 S. C. 171, 66 S. E. (2d) 698 (1951).

§ 65-252.1. When alimony payments income; when deductions.

In the case of a husband or wife who is divorced or legally separated either under a decree of divorce or of separation when such decree requires periodic alimony payments, such periodic payments shall be allowed as a deduction in computing the income for the purposes of the income tax of the husband or wife making such payments. The receipt of periodic alimony payments as above referred to by either the husband or wife shall be taxable as income in computing the net income subject to income tax of the recipient of such payment. The deduction above allowed shall not include any amounts which are required by decree to be paid for the maintenance of minor children of husband or wife. If periodic payments are anticipated by payment of a lump sum, such payment shall be amortized in equal annual amounts over a period of not less than ten years, commencing with the year in which payment was made, and the annual amount so amortized shall be allowed as a deduction in computing the net income of the payer and the same amount shall be included as income in computing the net income of the recipient.

1953 (48) 375.

§ 65-253. Items not included in gross income.

* * *

(7) Income received by any individual as a result of a sale of property being taken under the powers of eminent domain.

1942 Code § 2444; 1932 Code § 2444; 1927 (35) 1; 1942 (42) 1855; 1943 (43) 88; 1954 (48) 1471.

Effect of amendment.—Item (7) added by 1954 (48) 1471. Former section otherwise effective.

Cross reference.—As to interest on government bonds, see § 65-4.1.

§ 65-259. Deductions.

Cross reference. — As to alimony payments as deductions, see § 65-252.1.

"Ascertain," as used in subsec. (7), is to make sure or certain; to free from obscurity or doubt, to determine. *Etiwan*

Fertilizer Co. v. South Carolina Tax Comm., 217 S. C. 354, 60 S. E. (2d) 682 (1950).

The amount of the bad debt or claim should be actually determined before the

company's books are closed for the taxable year, and not left to guess work. *Etiwan Fertilizer Co. v. South Carolina*

Tax Comm., 217 S. C. 354, 60 S. E. (2d) 682 (1950).

ARTICLE 5.

Gain or Loss and Basis Therefor.

§ 65-271.1. Gain on sale of principal residence when new one purchased; adjustment of basis.

If property used by the taxpayer as his principal residence is sold or exchanged by him and, within a period beginning one year prior to the date of such sale or exchange and ending one year after such date, property is purchased and is used by the taxpayer as his principal residence, the gain, if any, from the sale or exchange of his old residence shall be taxable under the provisions of this chapter only to the extent that the taxpayer's selling price of the old residence exceeds the taxpayer's cost of purchasing the new residence.

When the purchase of a new residence results in the non-taxability of gain from the sale of an old residence, the basis for determination of future gain or loss on the disposition of the new residence shall be adjusted to include a reduction by an amount equal to the amount of the gain not subject to tax upon the sale of the old residence.

1953 (48) 68.

§ 65-275. No gain or loss on corporate reorganizations generally.

Organization of new corporation not a "reorganization."—The organization of a new corporation and the conveyance, without consideration, of the real estate assets of an old corporation to the new and the issuance of the shares of the latter to the shareholders of the old corporation, was not a "reorganization" within the meaning of this section. *Wilson v. South Carolina Tax Comm.*, 220 S. C. 171, 66 S. E. (2d) 698 (1951).

Transaction held liquidation and not consolidation or merger.—Where all assets of

a wholly owned subsidiary corporation were transferred to the parent corporation and the stock of the subsidiary was cancelled and the subsidiary was dissolved, the transaction could not be classed as a merger or consolidation, but was rather a liquidation, and the parent corporation was liable for the tax upon the excess of the value of the assets of the subsidiary over the cost to the parent. *Henry P. Moses Co. v. South Carolina Tax Comm.*, 224 S. C. 193, 78 S. E. (2d) 187 (1953).

§ 65-276. Basis for gain or loss on certain corporate organizations, mergers, etc.

Quoted in *Henry P. Moses Co. v. South Carolina Tax Comm.*, 224 S. C. 193, 78 S. E. (2d) 187 (1953).

§ 65-277. Gain or loss on corporate liquidations.

Transaction held liquidation and not consolidation or merger.—See note to § 65-275.

ARTICLE 9.

Payment, Collection and use of Tax.

§ 65-341. When tax payable; installment payments.

The full amount of the tax payable as shown on the face of the return shall be paid to the Commission at the office where the return is filed, at the time fixed by law for filing the return. When the income tax return of any taxpayer shows a tax liability over twenty-five dollars, if the taxpayer so elects, he may pay such tax in four equal installments, in which case the first installment shall be paid on the date prescribed for the payment of the tax by the taxpayer, the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month and the fourth installment on the fifteenth

day of the ninth month after such date. If any installment is not paid on or before the date fixed for its payment, the entire amount of unpaid tax, interest and penalty shall become due and payable. If the taxpayer is granted an extension of time in which to file his income tax return, the interest on deferred payments shall in no instance exceed six percent per annum on such deferred payments from the time the return is due to be filed until the tax due thereon is paid.

The provisions of this section shall not apply to the payment of additional taxes assessed by the Commission, such additional taxes to be paid as otherwise required by law.

1942 Code § 2458; 1932 Code § 2458; 1927 (35) 1; 1946 (44) 1491; 1954 (48) 1566.

Effect of amendment.—The amendment added all of the first part of the second sentence prior to the word "if".

CHAPTER 7. INHERITANCE TAX.

Article 2.

Imposition of Tax; Valuations, etc.

Sec.

65-464. Certain transfers deemed in contemplation of death.

ARTICLE 2.

Imposition of Tax; Valuations, etc.

§ 65-464. Certain transfers deemed in contemplation of death.

Transfers of property by gift or deed between parties related by blood or marriage, made and completed within three years prior to death and without an adequate valuable consideration, shall be considered made in contemplation of death.

1942 Code § 2480; 1932 Code § 2480; 1922 (32) 800; 1924 (33) 902; 1925 (34) 201; 1929 (36) 226; 1953 (48) 125.

Effect of amendment. — The period of time was formerly five years prior to death instead of three.

CHAPTER 9.

LICENSE FEES OF CORPORATIONS.

Sec.

65-601 to 65-616. [Repealed]

65-621. Annual report.

65-622. Same; when operation commences after January first.

65-623. Execution of report.

65-624. Forms for reports; failure to receive not excuse for failure to file.

65-625. License tax on corporations generally.

65-626. Proration of tax for business partly out of State.

65-627. Meaning of terms used in § 65-626.

65-628. License tax on utilities based on value of property.

Sec.

65-629. Additional license fee on utilities based on gross receipts.

65-630. Minimum utility license fee.

65-631. Building and loan associations and credit unions exempt.

65-632. Effect of Commission's receipt.

65-633. Penalty for failure to report or pay.

65-634. Enforced collection of tax.

65-635. Deposit of taxes collected.

65-636. Certificate of dissolution, etc., of domestic corporations.

65-637. Certificate of retirement from State of foreign corporation.

65-638. Fees for filing such certificates.

65-639. Commission to administer chapter.

65-640. Rules and regulations.

§§ 65-601 to 65-616. License fees of corporations.

Repealed by A. & J. R. 1953 (48) 301.

Cross reference.—See now §§ 65-621 to 65-640.

§ 65-621. Annual report.

Every corporation organized under the laws of this State to do business for profit, doing business in this State or using a portion of its capital or owning,

maintaining or operating one or more establishments or plants in this State, and every corporation organized to do business for profit under the laws of any other state, territory or country, doing business in this State or using a portion of its capital in this State or owning, maintaining or operating one or more establishments or plants in this State, shall, in addition to any and all other requirements of law, make a report annually to the Commission on or before the last day of March in such form as may be prescribed by the Commission, containing such information and facts as the Commission may require for the administration of the provisions of this chapter..

1953 (48) 301.

§ 65-622. Same; when operation commences after January first.

When a corporation commences to do business in this State, uses a portion of its capital in this State or acquires ownership of, commences maintenance of or commences operation of one or more establishments or plants in this State after January first in any year, the report required by § 65-621 shall be filed with the Commission on or before sixty days after such commencement of business, use of capital, acquisition of ownership, commencement of, maintenance or operation of an establishment or plant in this State.

The minimum license fee provided by § 65-630 shall be paid to the Commission at the same time the report required by the preceding paragraph of this section is filed.

1953 (48) 301.

§ 65-623. Execution of report.

The report required by §§ 65-621 or 65-622 shall be signed and sworn to before an officer duly authorized to administer oaths by an officer of the corporation duly authorized to make such report on behalf of the corporation.

1953 (48) 301.

§ 65-624. Forms for reports; failure to receive not excuse for failure to file.

The Commission shall cause to be prepared blank forms for such reports to be furnished upon application, but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making the return at the time required.

1953 (48) 301.

§ 65-625. License tax on corporations generally.

In addition to any and all other license taxes or fees or taxes of whatever kind every corporation required to file a report by § 65-621, except such corporations as are enumerated in § 65-628, shall pay to the Commission, at the time of filing the report required by § 65-621, an annual license fee of one mill upon each dollar paid to the capital stock and paid in as surplus of such corporation as shown by the records of the corporation on January first next preceding the date of filing the report.

The license fee provided for by this section shall be paid at the time of filing the report pursuant to the provisions of § 65-621, on or before the last day of March.

1953 (48) 301.

§ 65-626. Proration of tax for business partly out of State.

When a corporation does business in part within this State and in part without this State, uses a part of its capital within the State and uses a part of its capital without this State or owns, maintains or operates one or more establishments or plants within this State and owns, maintains or operates one or more establishments or plants without this State, the amount of the license fee above provided for shall be measured by a proportion of the dollars paid to the capital stock and paid in as surplus of the corporation, determined according to the following rules:

(1) If the principal business of the corporation in this State is manufacturing or if it is any form of collecting, buying, assembling or processing goods and ma-

terials within this State, the proportion shall be computed on the basis of the arithmetical average of the following two ratios: (a) the ratio of the value of the real estate and tangible personal property in this State to the value of the entire real estate and tangible personal property, with no deduction on account of encumbrances thereon; and (b) the ratio of the total cost of manufacturing, collecting, buying, assembling or processing within this State during the year to the total cost of manufacturing, collecting, buying, assembling or processing within and without the State during such year;

(2) If the principal business of a corporation in this State is selling, distributing or dealing in tangible personal property within this State, the proportion shall be computed upon the basis of the arithmetical average of the following two ratios: (a) the ratio of the value of the real estate and tangible personal property in this State during the year to the value of the total real estate and tangible personal property during the year with no deductions on account of encumbrances thereon; and (b) the ratio of the total sales made within this State during the year which were principally secured, negotiated or effected by employees, agents, consignees, officers or branches of the taxpayer resident or located in the State to the total sales made everywhere during the year; and

(3) If the principal profits or income of the corporation in this State is derived from sources other than manufacturing, collecting, buying, assembling or processing or selling, distributing or dealing in tangible personal property, the proportion shall be computed on the basis of the ratio of gross receipts in this State during the year to the total gross receipts for such year within and without the State.

1953 (48) 301.

§ 65-627. Meaning of terms used in § 65-626.

(1) The term "*cost of manufacturing, collecting, buying, assembling or processing*" as used in § 65-626 shall be interpreted in a manner to conform as nearly as may be to the best accounting practice in the trade or business. Unless in the opinion of the Commission the peculiar circumstances in any case justify a different basis, this term shall be generally interpreted to include as elements of cost within and without this State the following: the total cost of all goods, materials and supplies used in manufacturing, assembling or processing, regardless of where purchased; the total wages and salaries paid or accrued during the year in such manufacturing, assembling or processing activities; and the total overhead or manufacturing burden properly assignable according to good accounting practice to such manufacturing, assembling or processing activities; not including, however, property, privilege, stamp or other taxes.

(2) The value of "*real estate and tangible personal property*" shall be its actual value which, in the case of property valued or appraised for purpose of inventory, depreciation, depletion or other purposes, shall be the highest amount at which so valued or appraised and which in other cases shall be deemed to be its book value in the absence of affirmative evidence showing such value to be greater or less than the actual value, with no deductions on account of depreciation, depletion or obsolescence. The average value during the year shall be employed. The average value of property as above described at the beginning and end of the year ordinarily may be used, unless by reason of material changes during the year such average does not fairly represent the average of such year, in which event the average shall be determined upon a monthly or daily basis.

(3) The word "*year*" shall mean the accounting period of the corporation, as regularly established for the purposes of the income tax, which closes the next preceding January first; and

(4) "*Paid in surplus*" shall not include any capital surplus created by reason of a reorganization, consolidation or merger except such surplus as may result from a decrease of capital as an incident to such reorganization, consolidation or merger.

1953 (48) 301.

§ 65-628. License tax on utilities based on value of property.

In lieu of the license fee imposed by § 65-625, there is hereby levied in addition to any and all other license taxes and fees or taxes of whatever kind, a license fee of three mills upon each dollar of the value of property owned and used within this State in the conduct of the business of every railroad company, express company, street railway company, navigation company, waterworks company, power company, light company, gas company, telegraph company, telephone company, parlor, dining or sleeping car company, tank car company, refrigerating car company, fruit growers express car company and/or privately operated car line.

1953 (48) 301.

§ 65-629. Additional license fee on utilities based on gross receipts.

In addition to the license fee provided by § 65-628 and any and all other license taxes and fees or taxes of whatever kind, there is hereby levied an annual license fee of three mills upon the entire gross receipts from business within this State during the calendar year next preceding by every railroad company, express company, street railway company, navigation company, waterworks company, power company, light company, gas company, telegraph company, telephone company, parlor, dining or sleeping car company, tank car company, refrigerating car company, fruit growers express car company or other privately operated car line. The license fee provided for by this section shall be paid at the time of filing the report, pursuant to the provisions of § 65-621 on or before the last day of March.

1953 (48) 301.

§ 65-630. Minimum utility license fee.

In no case shall the license fee provided by §§ 65-628 and 65-629 be less than ten dollars for any one corporation.

1953 (48) 301.

§ 65-631. Building and loan associations and credit unions exempt.

The provisions of this chapter shall not apply to any building and loan association or any credit union doing a strictly mutual business or to insurance, fraternal, beneficial or mutual protection companies or associations. The words "*credit union*" as used herein shall mean a credit organization composed only of a membership of borrowers consisting of either State or federal employees.

1953 (48) 301.

§ 65-632. Effect of Commission's receipt.

The Commission's receipt showing the payment of the annual fees prescribed by this chapter shall constitute a certificate of compliance by such corporation with the provisions of this chapter and to the payment of the annual fees herein provided and shall license the corporation for the year ending December thirty-first next succeeding.

1953 (48) 301.

§ 65-633. Penalty for failure to report or pay.

In case any corporation required to file a report or to pay a license fee under this chapter shall fail or neglect to make such report or to pay such fee on or before the due date thereof, such corporation shall be subject to a penalty of five hundred dollars and, in addition thereto, interest at the rate of one per cent per month or fraction of a month from the date the report or fee was due. The Com-

mission, however, upon good cause shown, may in its discretion, remit the penalty, or interest, or any part thereof, prescribed in this section.

1953 (48) 301.

§ 65-634. Enforced collection of tax.

If such tax and penalty, either or both, have not been paid as herein provided, the Commission shall forthwith issue a warrant of execution directed to the sheriff of the county or to the tax collector of the county in which the taxpayer resides or where his business is conducted. The sheriff or tax collector to whom such execution is directed shall proceed to enforce it in the same manner provided by law for the enforcement of an execution issued by a county treasurer against a delinquent taxpayer. The taxes and all penalties herein provided for shall be held as a debt payable to the State by the party against whom they shall be charged and all such taxes, penalties and assessments shall be a first lien in all cases whatsoever upon all property of the party charged therewith.

1953 (48) 301.

§ 65-635. Deposit of taxes collected.

All moneys collected by the Commission under the provisions of this chapter shall be deposited to the credit of the State Treasurer, as other taxes now collected are deposited.

1953 (48) 301.

§ 65-636. Certificate of dissolution, etc., of domestic corporations.

Every domestic corporation in case of dissolution, revocation of charter or abandonment of its corporate purposes shall file with the Secretary of State a certificate of such dissolution, revocation of charter or abandonment. In case of dissolution or abandonment by voluntary action of the corporation, such certificate shall be signed by the president, secretary and a majority of the board of directors of the corporation. In case of dissolution or revocation of charter by action of a competent court, such certificate shall be signed by the clerk of the court entering the decree of dissolution or revocation. The fees for making or filing of such certificate with the Secretary of State shall be taxed in the cost in favor of the party paying them.

1953 (48) 301.

§ 65-637. Certificate of retirement from State of foreign corporation.

Every foreign corporation when it shall retire from business in this State shall file with the Secretary of State a certificate to that effect, signed by the president and secretary of the corporation.

1953 (48) 301.

§ 65-638. Fees for filing such certificates.

The fee for filing certificates of dissolution, revocation of charter, abandonment or retirement of corporations shall be five dollars. The mere retirement from business of a domestic or foreign corporation without having filed the certificate provided for in this section shall not exempt it from the requirements to make its reports and pay fees in accordance with the provisions of this chapter.

1953 (48) 301.

§ 65-639. Commission to administer chapter.

The administration of the provisions of this chapter and the collection of the license fees provided for herein is hereby vested in the Commission.

1953 (48) 301.

§ 65-640. Rules and regulations.

The Commission shall prescribe such rules and regulations as, in its judgment, may be necessary to the enforcement and administration of the provisions of this chapter and all such rules and regulations shall have the full force and effect of law.

1953 (48) 301.

CHAPTER 10.

CERTAIN STAMP AND CERTAIN BUSINESS LICENSE TAXES.

Article 1.**General Provisions.**

Sec.

65-654.1. Use of business license meter impressions in lieu of stamps.

Article 2.**Documentary Stamp Tax.**

65-686.11. Commodities with illegible or unsatisfactory business license meter impression subject to confiscation.

Article 3.**Tobacco, Ammunition and Playing Cards.**

65-702. Tax rates on tobacco products.

Article 5.**Soft Drinks Tax.**

65-753. Definitions.

65-765. Exemption of certain pure fruit and vegetable juices.

Article 5.1.**Alternate Soft Drinks Tax.**

Sec.

65-787.1. Definitions; as used in this article.

Article 8.**Public Bathing Places and Motion Picture Theatres.**

65-833. Schedule of annual motion picture theatre licenses except "drive-ins."

65-833.1. Annual licenses for "drive-ins."

65-834. Determination of seating capacity; theatre make reports.

65-835. Payment of motion picture theatre licenses.

ARTICLE 1.

*General Provisions.***§ 65-651. Administration of chapter; county officers to assist.**

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Tax Commission, in volume 7.

§ 65-654.1. Use of business license meter impressions in lieu of stamps.

The use of business license meter impressions, in lieu of revenue stamps, on cigarettes or other commodities required by law to carry State revenue stamps, may be permitted, in the discretion of the South Carolina Tax Commission.

1954 (48) 1566.

ARTICLE 2.

*Documentary Stamp Tax.***§ 65-681. Imposition.**

Notes executed and mailed outside of State, etc.

In accord with paragraph under this

catchline in Code. See South Carolina Elec., etc., Co. v. Pinckney, 217 S. C. 407, 60 S. E. (2d) 851 (1950).

§ 65-682. Tax on bonds, etc.

Bonds executed and delivered outside of State.—The fact that the issue and sale of bonds of a South Carolina electric company had to be approved by the South Carolina Public Service Commission under § 24-81 did not render them

subject to the documentary stamp tax, where the bonds were executed, delivered and made payable in the State of New York. South Carolina Elec., etc., Co. v. Pinckney, 217 S. C. 407, 60 S. E. (2d) 851 (1950).

§ 65-686.11. Commodities with illegible or unsatisfactory business license meter impression subject to confiscation.

Any cigarettes or other commodities, required by law to carry State revenue stamps and permission for the use of business license meter impressions thereon in lieu of revenue stamps was granted by the Commission, upon which such meter impression is illegible or in the opinion of the Commission unsatisfactory, shall be subject to confiscation by the Commission.

1954 (48) 1566.

Cross reference.—See § 65-654.1 for authority to use business license meter im-

pressions in lieu of stamps on certain articles.

ARTICLE 3.

Tobacco, Ammunition and Playing Cards.

§ 65-701. Imposition of tax.

Cited in *State v. Byrnes*, 219 S. C. 485,
66 S. E. (2d) 33 (1951).

§ 65-702. Tax rates on tobacco products.

(5) Upon all cigarettes made of tobacco or any substitute therefor, one and one-half mills on each cigarette.

1953 (48) 74.

Effect of amendment. — The tax was formerly two and one-half mills on each cigarette. Only paragraph (5) of the section was affected by the amendment and the remainder of the section is not set forth above.

ARTICLE 4.

Beer and Wine.

§ 65-737. Rules and regulations of Commission.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Tax Commission, volume 7.

ARTICLE 5.

Soft Drinks Tax.

§ 65-751. Liability to tax.

Cited in *State v. Byrnes*, 219 S. C. 485,
66 S. E. (2d) 33 (1951).

§ 65-753. Definitions.

The phrase "*bottled drinks*" as used in this article shall mean in every instance soft drinks in any closed container whatsoever.

1952 (47) 1731; 1954 (48) 1566.

Effect of amendments.—The phrase, "except fruit juices plain and/or fortified" formerly appeared at the end of the section. The first two paragraphs of the section were not changed and therefore are not set out above.

Cited in *Royal Crown Bottling Co., Inc. v. Chandler, Westbrook Advance Sheets*, No. 16913, filed Sept. 27, 1954.

§ 65-765. Exemption of certain pure fruit and vegetable juices.

* * * As used in this section the term "*pure fruit and vegetable juices*" means the original resultant liquid obtained from the pressing of sound ripe fruit. But the addition of sugar and vitamins to canned natural fruit juices shall not render such juices taxable.

1946 (44) 1471; 1948 (45) 2091; 1952 (47) 1731; 1954 (48) 1566.

Effect of amendment.—The amendment substituted the first sentence above for the last sentence of this section and added the last sentence above. The former section not otherwise changed.

§ 65-771. Rules and regulations as to crowns.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Tax Commission, in volume 7.

ARTICLE 5.1.

Alternate Soft Drinks Tax.

§ 65-787.1. Definitions.

As used in this article:

(1) The word "*bottle*" or "*bottles*" shall mean in every instance any closed container whatsoever.

(2) The phrase “*bottled drinks*” shall mean in every instance soft drinks in any closed container whatsoever.

1954 (48) 1566.

ARTICLE 8.

Public Bathing Places and Motion Picture Theaters.

§ 65-833. **Schedule of annual motion picture theater licenses except “drive-ins”.**

The following schedule of annual licenses shall be paid by all operators of motion picture theaters, except “drive-in” motion picture theaters, including theaters in which stage shows are run as a minor incident or added attraction on the same program with motion pictures:

<i>Theater seats</i>	<i>Annual license</i>
Under 250	\$ 25.00
251 to 500	\$ 50.00
501 to 750	\$ 75.00
751 to 900	\$100.00
901 to 1150	\$150.00
1151 to 1300	\$200.00
1301 to 1550	\$250.00
Over 1550	\$300.00

1942 Code § 2531; 1932 Code § 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1946 (44) 1472; 1954 (48) 1539.

Effect of amendment.—The amendment placed license basis on seating capacity instead of population of town.

§ 65-833.1. **Annual licenses for “drive-ins”.**

The following schedule of annual licenses shall be paid by all operators of “drive-in” motion picture theaters:

<i>Number of speakers</i>	<i>Annual license</i>
0 to 200	\$ 50.00
201 to 400	\$100.00
401 to 600	\$150.00
601 to 800	\$200.00
801 to 1000	\$250.00
Over 1000	\$350.00

1954 (48) 1539.

§ 65-834. **Determination of seating capacity; theaters make reports.**

The seating capacity shall be ascertained on the first day of each calendar year, or on the day a theater opens for business if it opens during the calendar year and the seating capacity so ascertained shall be the basis for the tax during that calendar year. The Commission shall be notified in writing ten days in advance of any change in the seating capacity during a calendar year and in the event the seating is increased into a higher bracket during a year the tax for the entire year shall be in the higher bracket but no credit shall be allowed for a decrease during a calendar year. The theater shall submit an annual report to the Commission, due with the payment of the tax, as to the number of seats or speakers in such theater.

1942 Code § 2531; 1932 Code § 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1954 (48) 1539.

Effect of amendment.—The amendment on calendar year rather than quarter of a put time for determining seating capacity year and added last sentence above.

§ 65-835. Payment of motion picture theater licenses.

The annual licenses provided for in §§ 65-833 and 65-833.1 shall be paid annually and shall be paid to the Commission by the fifteenth day of January or within fifteen days after the opening of a theater should the theater open within the calendar year. In the event a theater is opened during the year it shall be required to pay a pro rata share of the license with a minimum of at least one-half the annual license for its bracket. A ten percent penalty for a late remittance of this tax shall be levied and interest charged at the rate of one-half of one percent per month for delinquent payments. No refund shall be made to any operator who ceases business after securing a license. In case any theater is closed temporarily for repairs or otherwise no allowance will be made on the amount of tax due for the period it remains closed.

1942 Code § 2531; 1932 Code § 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1954 (48) 1539.

Effect of amendment.—Formerly licenses amendment further changed basis for new were prorated quarterly and daily. The theaters and added the penalty.

ARTICLE 9.

COLLECTION AND ENFORCEMENT GENERALLY.

§ 65-851. Enforcement rules and regulations.

Rules and regulations issued under authority of this section, see Rules and Regulations, Tax Commission, in volume 7.

CHAPTER 11.

OTHER BUSINESS LICENSE TAXES.

Article 1.

Power Tax.

Sec.

65-902. Exemptions from tax.

ARTICLE 1.

*Power Tax.***§ 65-902. Exemptions from tax.**

(7) Electric power used in manufacturing or generating hydro-electric power and steam electric power and electric power used in the operation of such electric power manufacturing or generating plants and auxiliary machinery and equipment necessary thereto. But such power that is used for generation of power which is to be exempt from taxation shall be exempt only if it is metered.

1953 (48) 215.

Effect of amendment.—The amendment affected by the amendment and is therefore not set forth above. The section added the above paragraph. The section as originally enacted was not otherwise

CHAPTER 12.

GASOLINE TAX.

ARTICLE 2.

*Tax on Gasoline Sales.***§ 65-1062. Imposition.**

Cited in *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

ARTICLE 3.

Tax on Stored Gasoline.

§ 65-1081. **Imposition.**

Cited in *State v. Byrnes*, 219 S. C. 485,
66 S. E. (2d) 33 (1951).

CHAPTER 13.

TAX ON "FUEL."

Sec.

65-1220. Penalties.

§ 65-1220. **Penalties.**

Any person violating any of the provisions of this chapter, a penalty for which is not otherwise provided, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment for not more than thirty days. In addition to any penalty imposed in conformity to the above, the user shall be required to pay all taxes and penalties due the State under this chapter.

1951 (47) 451; 1954 (48) 1493.

Effect of amendment.—The amendment reduced the maximum fine from two hundred dollars to one hundred dollars, fixed minimum fine, reduced maximum imprisonment from six months and eliminated authority to impose fine and imprisonment.

CHAPTER 14.

ALCOHOLIC BEVERAGES.

ARTICLE 2.

License Taxes for Sale of Alcoholic Beverages.

§ 65-1267. **Stamps for taxes.**

Stated in *Asmer v. Livingston*, _____
S. C. _____, 82 S. E. (2d) 465 (1954).

§ 65-1268. **Sale of stamps; refund.**

Refund statute of this character is not a revenue statute and should not be strictly construed against the State, and any person seeking relief under it must bring himself clearly within its terms; and retail liquor dealer was not entitled to refund for tax stamps destroyed by fire, since the

word "licensee" in this section refers to holder of wholesaler's license mentioned in preceding sentence, and refund here provided for can be made to wholesaler alone who paid for stamps, and not to a retail licensee. *Asmer v. Livingston*, _____
S. C. _____, 82 S. E. (2d) 465 (1954).

§ 65-1270. **Possession of unstamped bottles, etc.**

Cited in *State v. McCrae*, 222 S. C. 194,
72 S. E. (2d) 451 (1952).

CHAPTER 15.

RETAIL LICENSE, SALES AND USE TAXES.

Article 1.
Definitions.

Sec.

13-1361.1. Same; purchases at retail for storage, etc.,

Article 3.
Sales Tax.

65-1404. Exemptions.

65-1405. Taxes due monthly; reports and payment of tax.

Sec.

65-1407. Amounts may add to price because of tax.

65-1408. [Repealed.]

Article 4.
Use Tax.

65-1430. Returns of purchasers.

ARTICLE 1.

*Definitions.***§ 65-1351. Effect of definitions.**

Chapter is constitutional.—The General Appropriation Act of 1951 [1951 (47) 546], from which this chapter was codified, is a valid enactment of the General Assembly; the retail sales and use tax therein imposed is a proper exercise of the tax-

ing power of the State; and the State School Bonds which are authorized will, when issued, constitute obligations of the tenor and terms set forth in the Act. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

§ 65-1359. Retailer and seller.

The last paragraph of this section does not amount to an unconstitutional attempt to delegate legislative power to an admin-

istrative agency of the executive department. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

§ 65-1361.1. Same; purchases at retail for storage, etc., additions to sales price made permissive instead of mandatory.

Notwithstanding any other provision of law, sales of any tangible personal property to contractors purchasing such property for use in the performance of contracts and sales of any tangible personal property to contractors purchasing such property either (a) as agents of the United States or its instrumentalities, or (b) for their own account for use in the performance of contracts with the United States or its instrumentalities, are retail sales subject to the tax levied against the vendor as provided by this chapter and are purchases at retail for storage, use or other consumption in this State subject to the tax as provided by this chapter.

1954 (48) 1566.

ARTICLE 2.

*Retail Licenses (Chain Store Tax).***§ 65-1382. Requirement of license and annual tax therefor.**

This article does not violate S. C. Const., Art. 10, § 1, which provides that "the General Assembly may provide for a graduated tax on incomes, and for a graduated license on occupations and busi-

ness," although the graduation of the tax provided in this section is not a perfect or limitless graduation. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

ARTICLE 3.

*Sales Tax.***§ 65-1401. Imposition of tax.**

Sales tax is an excise tax.—The sales tax is an imposition upon the privilege of the business of selling at retail and measured by the amount of business done, which is a clear case of an excise tax to which the constitutional provisions relating to property taxes are irrelevant. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

And does not violate S. C. Const., Art. 1, § 6.—This article does not violate S. C. Const., Art. 1, § 6, which provides that "All property subject to taxation shall be taxed in proportion to its value," since that provision is inapplicable to license or excise taxes. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

§ 65-1404. Exemptions.

(3) The gross proceeds of the sale of all livestock, baby chicks and poults by whomsoever sold;

1952 (47) 1999.

Effect of amendment.—The amendment added baby chicks and poults. Only paragraph (3) of the section was amended and the remaining paragraphs are therefore not set out above.

Constitutionality.—The exemptions from the sales and use tax levy contained in

this article do not violate the "privileges and immunities," due process and equal protection clauses in S. C. Const., Art. 1, § 5. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

As to exemption of gross proceeds of sales of tangible personal property deliv-

ered prior to January 1, 1952, under terms of construction contracts executed prior to April 1, 1951, from sales and use taxes

imposed under this chapter, see *M. B. Kahn Const. Co. v. Crain*, 222 S. C. 17, 71 S. E. (2d) 503 (1952).

§ 65-1405. Taxes due monthly; reports and payment of tax.

A return shall be considered to be timely filed if such return is mailed and has a postmark dated on or before the date the return is required by law to be filed.

1953 (48) 187.

Effect of amendment.—The amendment added the paragraph set forth above. The original section was not otherwise affected

and therefore only the additional paragraph is set forth above.

§ 65-1407. Amounts may add to price because of tax.

Every person engaged in or continuing within this State in a business for which a license or privilege tax is required by this article may add to the sales price the following:

* * *

1951 (47) 546; 1954 (48) 1566.

Effect of amendment.—The amendment made additions to sales price permissive instead of mandatory. The above provisions

replace the first six lines of the section and the remainder of the section is unchanged and effective.

§ 65-1408. Unlawful not to add to or to refund amounts required to be added.

Repealed by A. & J. R. 1954 (48) 1566.

ARTICLE 4.

Use Tax.

§ 65-1421. Imposition of tax.

Constitutionality.—This article does not violate S. C. Const., Art. 1, § 5, or the commerce clause, Art. 1, § 8, of the United States Constitution. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

Purpose of article.—The article levies a use tax which is manifestly for the purpose of preventing evasion by purchases at retail from without the State or under other circumstances which might or would avoid application of the retail sales tax. The use tax thus com-

plements the sales tax. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

While the use tax is complementary to the sales tax it is by no means essential to the validity of it. If the terms of this chapter relating to the use tax were eliminated, the chapter would remain complete, capable of being executed independently of the use tax provisions and without doing undue violence to the legislative intent. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

§ 65-1422. Exemptions.

Constitutionality.—The exemptions from the use tax levy which are contained in this article do not violate the "privileges and immunities," due process and equal protection clauses in S. C. Const. Art. 1, § 5. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

As to exemption of gross proceeds of

sales of tangible personal property, delivered prior to January 1, 1952, under terms of construction contracts executed prior to April 1, 1951, from sales and use taxes imposed under this chapter, see *M. B. Kahn Const. Co. v. Crain*, 222 S. C. 17, 71 S. E. (2d) 503 (1952).

§ 65-1430. Returns of purchasers.

A return shall be considered to be timely filed if such return is mailed and has a postmark dated on or before the date the return is required by law to be filed.

1953 (48) 187.

Effect of amendment.—The amendment added the paragraph set forth above. The original section was not otherwise affected

and therefore only the additional paragraph is set forth above.

ARTICLE 5.

General Provisions.

§ 65-1465. Collection not to be stayed by injunction, etc.

Owner may bring claim and delivery against tax collector for property illegally seized.—This section refers only to pay-

ment of taxes by a person charged with the payment thereof, and would not prevent one from bringing action in claim and

delivery for possession of his property which had been illegally seized by delinquent tax collector for unpaid taxes of a third party. *Stephens v. Hendricks, West-*

brook Advance Sheets, No. 16912, filed Sept. 16, 1954. (Ed. note.—Three of the Justices concurred only in result of this opinion, and it therefore is not a precedent).

§ 65-1466. Payment of tax under protest.

Applied in *Stephens v. Hendricks, Westbrook Advance Sheets, No. 16912, filed Sept. 16, 1954.*

§ 65-1467. Suit to recover tax paid under protest.

This section provides remedy only to defaulting tax payer.—While remedy provided in this section is exclusive as to a defaulting tax payer, it provides no remedy for one to test right of possession to his property when it has been illegally seized by delinquent tax collector for unpaid

taxes of a third party, and claim and delivery action for its possession is proper remedy. *Stephens v. Hendricks, Westbrook Advance Sheets, No. 16912, filed Sept. 16, 1954. (Ed. note.—Three of the Justices concurred only in result of this opinion, and it therefore is not a precedent).*

§ 65-1479. Disposition and use of revenue collected.

This chapter does not violate S. C. Const., Art. 11, §§ 6 and 12, allocating to the public schools the proceeds of the poll tax and the tax upon the sale, or license for the sale, of intoxicating liq-

uors, since those sections do not confine the State's support of the public schools to the proceeds of such taxes. *State v. Byrnes, 219 S. C. 485, 66 S. E. (2d) 33 (1951).*

CHAPTER 16.

THE ASSESSMENT OF PROPERTY TAXES.

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65-1649.1. Same.

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Article 9.

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65-1806. Special provision for Aiken County.

65-1809.1. Special provision for Darlington County.

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65-1828. [Repealed.]

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65-1832. County board of assessors for Marlboro County.

65-1834. County board of assessors for Horry County.

65-1835. Same; executive secretary and assessors; records.

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65-1842.1. Amount of per diem and allowance of mileage in Chesterfield County.

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65-1862. Board of tax assessors for Berkeley County.

65-1864. Special provision for Cherokee County.

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65-1865.3. District boards in Florence County.

65-1865.4. County board in Florence County.

65-1866.1. Special provision for Greenwood County.

65-1867. Special board of equalization for Lake City.

65-1876.1. Board of assessors and equalization in McCormick County.

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Article 10.**County Boards of Equalization and Similar Boards.**

65-1861.1. Special provision for Abbeville County.

ARTICLE 1.*General Provisions.***§ 65-1508. Same; school districts tax districts in certain counties.**

In *Abbeville*, *Darlington*, *Florence* and *Newberry* Counties each school district shall constitute a tax district.

All former school districts of *Abbeville* County having been duly consolidated into one school district and designated as School District No. 60, this school district shall constitute a tax district.

1942 Code §§ 2736, 2737; 1932 Code §§ 2736, 2737; Civ. C. '22 §§ 468, 469; Civ. C. '12 §§ 416, 417; Civ. C. '02 §§ 375, 376; 1882 (18) 98; 1899 (23) 116; 1900 (23) 284; 1901 (23) 671; 1908 (25) 1190; 1912 (27) 679; 1914 (28) 760; 1916 (29) 832, 834, 835; 1917 (30) 347; 1918 (30) 722; 1919 (31) 182; 1920 (31) 780, 859; 1921 (32) 163; 1926 (34) 908; 1931 (37) 98; 1939 (41) 231, 232; 1952 (47) 1976; 1953 (48) 419.

Effect of amendments. — The 1952 the first paragraph. The 1953 amendment added *Newberry* County in added the second paragraph.

§ 65-1508.1. Same; in Fairfield County.

Provisions of § 1 of A. & J. R. 1953 (48) 109 make up this section.

ARTICLE 2.*Property Taxable; Exemptions.***§ 65-1522. General exemptions from taxes.**

The following property shall be exempt from taxation, to wit:

(10.1) *Motor vehicles of disabled veterans.*—All personal motor vehicles owned by any disabled veteran for which a special license tag has been issued by the State Highway Department under the provisions of §§ 46-61 and 46-62 and this exemption shall include only State, county and municipal taxes.

(11) *Automobiles, etc., of paraplegics.*

Repealed by A. & J. R. 1952 (47) 2148.

(44) *Certain rural electric lines.*—All property of every kind owned by rural electric cooperatives organized under the provision of chapter 15 of Title 12 and this exemption shall include only State, county, school, municipal and special taxes. 1952 (47) 2148; 1954 (48) 1566.

Cross reference.—As to paragraphs (35) to (39), government and municipal bonds, etc., see § 65-4.1.

Effect of amendments.—The 1952 amendment added paragraph (10.1) and repealed paragraph (11). The 1954 amendment eliminated "on April 1 1951" in paragraph

(44). As the rest of the section was not affected by the amendments it is not set out above.

Cited in *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

§ 65-1523. Specific property exempt from taxation.

(14.1) *State Headquarters of Crippled Children Society.*—The property owned and used as State Headquarters by the Crippled Children Society of South Carolina, located at 1517 Laurel Street, in the city of *Columbia*, shall be exempt from all county, school and city taxes so long as the property is used for charitable purposes and so long as said property is not rented or leased and remains non-income producing.

(15.1.) *Fairview Rest Farm.*—All property owned by the Fairview Rest Farm at *Ridgeway*, in *Fairfield* County, shall be exempt from all county, municipal, school and special taxes as long as it is used for charitable and eleemosynary purposes.

(20) *Alcoholics Anonymous.*—The property owned and used by Alcoholics Anonymous, an eleemosynary corporation, located at 2013 College Street in the city of *Columbia* shall be exempt from the payment of all county, school and municipal taxes so long as the property is owned by said corporation, is used for charitable purposes and is not operated for profit by lease or otherwise;

(44.1) *Cayce Masonic Lodge No. 384 A. F. M.*—All property, both real and personal, of Cayce Masonic Lodge No. 384 A. F. M. shall be exempt from State, county and municipal taxes.

(49.1) *Columbia Lodge 1190, B. P. O. E.*—All real and personal property of Columbia Lodge 1190 of the Benevolent and Protective Order of Elks shall be exempt from taxation by *Richland* County so long as the property or income therefrom is used for charitable and cultural purposes; the city of *Columbia* may similarly exempt such property from taxation for city purposes.

(61.1.) *Florence Museum.*—The property situate at 558 Spruce Street in the city of *Florence*, *Florence* County, shall be exempt from all county and municipal taxes or assessments so long as it is used by the Florence Museum, a corporation, in conjunction with its purposes and functions.

(65) *Shaw Field.*—All property which is used for military purposes in connection with or incidental to Shaw Field held by the United States Government by lease shall be exempt from all State, county and school taxes in *Sumter* County; provided, however, that no property owned or leased by any person which is located within the Shaw Field reservation and which is operated for a profit shall be exempt under the provisions of this section; and

1952 (47) 2027; 1953 (48) 56, 61, 66, 80, 140; 1954 (48) 1438.

Effect of amendments. — The 1952 amendment inserted paragraph (20) of the section, that paragraph number having been formerly left blank. The 1953 amendments inserted paragraphs (14.1), (15.1.), (49.1) and (61.1) and added the proviso

to paragraph (65). The 1954 amendment added paragraph (44.1). The other paragraphs of the section were not affected by any of the amendments and are therefore not set forth above.

§ 65-1525. New manufacturing establishments in certain other counties.

All new manufacturing establishments located in *Chesterfield*, *Orangeburg* and *Williamsburg* Counties shall be exempt from all county taxes, except for school purposes, for five years from the time of their establishment provided that the cost thereof is not less than twenty-five thousand dollars.

1942 Code §§ 2851, 2876; 1932 Code § 2586; 1930 (36) 1679; 1937 (40) 459; 1947 (45) 292; 1950 (46) 2280; 1953 (48) 264.

Effect of amendment.—The amendment eliminated Saluda County which was formerly covered by the section though

with a minimum cost figure of \$50,000 instead of \$25,000. See now for Saluda County, § 65-1569.10.

§ 65-1527. Additions to manufacturing establishments in certain counties.

(2) Fifty thousand dollars in *Abbeville, Aiken, Anderson, Bamberg, Chester, Greenville, Kershaw, Laurens, Lee, Sumter* and *York* Counties.

1953 (48) 264; 1954 (48) 1415, 1685.

Effect of amendments.—The 1953 amendment and 1954 (48) 1685 deleted Saluda County from the above paragraph (2). 1954 (48) 1415 deleted Darlington County. The

remainder of the section was not affected by the amendments and is therefore not set forth above. As to Saluda County, see § 65-1569.10.

§ 65-1543. Additions to manufacturing plants in Charleston County.

Manufactories may be exempted from taxation.—Legislature may exempt from levy of all or any portion of county taxes the properties of manufacturers located in county where taxes are levied. And, except those levied for schools and public service districts, this section grants exemp-

tion from all county taxes, including those levied for servicing county bonds, in respect to properties of manufacturers which are qualified for exemption hereunder. *West Virginia Pulp & Paper Co. v. Riddock*, _____ S. C. _____, 82 S. E. (2d) 189 (1954).

§ 65-1547. Plants, enterprises, hospital facilities and medical clinics in Chesterfield County.

Provisions of A. & J. R. 1953 (48) 15 as amended by 1954 (48) 1824 make up this section.

§ 65-1549. Garment industries in Colleton County.

Repealed by A. & J. R. 1954 (48) 1559.

Cross reference.—See now § 65-1549.1.

§ 65-1549.1. Manufacturing or processing enterprises and additions in Colleton County.

In *Colleton* County all new manufacturing or processing enterprises, when the capital of the enterprise is not less than twenty-five thousand dollars and all additions to existing manufacturing or processing enterprises, when the cost of the addition is not less than fifty thousand dollars, are exempt from all property taxes for a period of five years from the establishment of such manufacturing or processing enterprise or the addition to such existing manufacturing or processing enterprise. The terms "*new manufacturing or processing enterprises*" and "*additions to existing manufacturing or processing enterprises*" shall include and the exemption herein provided for shall extend to (a) land and buildings owned or leased and occupied by such enterprises and (b) machinery, equipment and other personal property subject to ad valorem taxes used in the conduct of the business of such enterprises. Any person desiring such exemption shall make application to the county treasurer and county auditor, giving full information as to the plant to be established or enlarged, and upon the treasurer and auditor determining that such enterprise conforms to the requirements of this section shall issue tax exemption certificate which shall be good for the next ensuing five years of taxes.

1954 (48) 1559.

§ 65-1550. Manufacturing establishments in Dillon County.

Amended by A. & J. R. 1954 (48) 1472.

§ 65-1557. Industries in Horry County.

Amended by A. & J. R. 1953 (48) 262.

§ 65-1564.1. Manufacturing enterprises and additions in Marlboro County.

All manufacturing enterprises locating in *Marlboro* County or recently located therein, the plant or plants, of which are in process of construction or completion, the cost of which plant is not less than fifty thousand dollars, and every addition made to the plants of manufacturing enterprises in said county after March 15 1954, the cost of such addition in each case is not less than one hundred thousand

dollars, are hereby exempt from the payment of all county taxes except for school purposes for a period of five years beginning with the first year in which taxes are due on the completed plant, addition or additions.

1954 (48) 1492.

§ 65-1569.10. Manufacturing or processing enterprises and additions in Saluda County.

All new manufacturing or processing enterprises located in *Saluda* County, when the capital or valuation of such enterprise is not less than fifty thousand dollars, are exempt from all county taxes except for school purposes for a period of five years from the date of the establishment of any such new enterprise. All new additions to such enterprises located in *Saluda* County and consisting of buildings or machinery to existing enterprises, when the cost of the addition or the machinery, or their combined cost, is not less than fifty thousand dollars, are exempt from all county taxes, except for school purposes, for a period of five years from the date of the completion of the addition or the installation of the machinery except that when the new machinery is a replacement of old machinery it may not be included in the exemption herein provided for unless it comes within the provision of § 65-1569.11.

1954 (48) 1697.

§ 65-1569.11. Same; replaced machinery.

In order to encourage the replacement of old, antiquated or obsolete machinery in the existing manufacturing or processing enterprises in *Saluda* County, any replaced machinery is exempt from all county taxes, except for school purposes, for a period of three years from the date of the installation of the machinery if the cost of the replaced machinery is one hundred thousand dollars or more, exclusive of the reasonable value of the machinery replaced.

1954 (48) 1697.

§ 65-1569.12. Same; must file request to obtain benefit of §§ 65-1569.10 and 65-1569.11.

In order for any manufacturing or processing enterprise to obtain the benefit of any exemption provided for in §§ 65-1569.10 and 65-1569.11, any such enterprise shall file with the county auditor a written request for such exemption, and support the same by furnishing the auditor with invoices or other evidence satisfactory to him, showing the facts upon which the application for the exemption is based.

1954 (48) 1697.

§ 65-1570. New manufacturing plants and additions in Spartanburg County.

Plant held a new manufacturing enterprise, rather than a mere addition to an existing manufacturing plant. *Arkwright Mills v. Murph*, 219 S. C. 438, 65 S. E. (2d) 665 (1951).

§ 65-1583. Citizens in armed forces in World War II exempt from certain taxes in certain counties.

Cross reference.—For other provisions exempting persons in the armed forces or veterans from certain taxes, see §§ 44-464, 44-655, 44-656, 65-1522(10.1), 65-1583.1, 65-1584 to 65-1586 and 65-1993.

§ 65-1583.1. Deferment of taxes and remission of penalties of Greenville county citizens in armed forces.

Provisions of §§ 1 and 2 of A. & J. R. 1953 (48) 166 make up this section.

Cross reference.—For other provisions exempting persons in the armed forces or veterans from certain taxes, see §§ 44-464, 44-655, 44-656, 65-1522(10.1), 65-1583, 65-1584 to 65-1586 and 65-1993.

§ 65-1584. Sheriff in Lancaster County to nulla bona certain taxes to persons in United States forces.

Cross reference.—For other provisions 44-655, 44-656, 65-1522(10.1), 65-1583, 65-exempting persons in the armed forces or 1583.1, 65-1584.1 to 65-1586 and 65-1993.
veterans from certain taxes, see §§ 44-464,

§ 65-1584.1. Same; for automobiles of persons in armed forces or receiving assistance in Chesterfield County.

Provisions of A. & J. R. 1953 (48) 361 make up this section.

Cross reference.—For other provisions 44-655, 44-656, 65-1522(10.1), 65-1583 to exempting persons in the armed forces or 65-1584, 65-1584.2 to 65-1586 and 65-1993.
veterans from certain taxes, see §§ 44-464,

§ 65-1584.2. Same; for automobiles of persons in armed forces from Spartanburg County.

Provisions of A. & J. R. 1953 (48) 9 make up this section.

Cross reference.—For other provisions 44-655, 44-656, 65-1522(10.1), 65-1583 to exempting persons in the armed forces or 65-1584.1, 65-1584.3 to 65-1586 and 65-1993.
veterans from certain taxes, see §§ 44-464,

§ 65-1584.3. Same; for automobiles of persons in armed forces from Union County.

Provisions of A. & J. R. 1953 (48) 186 make up this section.

Cross reference.—For other provisions 44-655, 44-656, 65-1522(10.1), 65-1583 to exempting persons in the armed forces or 65-1584.2, 65-1585, 65-1586 and 65-1993.
veterans from certain taxes, see §§ 44-464,

§ 65-1585. Citizens in armed forces in Korean war exempt from certain taxes in certain counties.

Cross reference.—For other provisions 44-655, 44-656, 65-1522(10.1), 65-1583 to 65-exempting persons in the armed forces or 1584.3, 65-1586 and 65-1993.
veterans from certain taxes, see §§ 44-464,

ARTICLE 3.

Liability for Taxes; Returns Generally.

§ 65-1614.1. Same; in Beaufort County.

All persons in *Beaufort* County who are required by law to make returns of personal property shall make full returns of all real estate and improvements thereon between the first day of January and the first day of March 1955 and at the same time in every fourth year thereafter.

1954 (48) 1819.

§ 65-1618. Mailing forms to taxpayers in Marlboro County; filing same; penalty for failure to file.

The board of tax assessors for *Marlboro* County may mail to all property owners, agents, executors or administrators special forms of returns. The returns shall be prepared by the owner, agent, executor or administrator and signed before a notary public or the county auditor and must be mailed to the board of assessors within a stated time following the receipt thereof. When a property owner, agent, executor or administrator fails to mail the forms, completed so far as is possible, to the board of tax assessors within the stated time following receipt of them the county auditor shall add an amount equal to twenty per cent of the assessment made by the board of assessors as a penalty which shall be collected along with the normal assessments. The penalty prescribed shall only apply to the years in which the owner, agent, executor or administrator fails or refuses to mail the required form.

1952 (47) 1942.

§ 65-1642. Same; exception for city of Florence and Marlboro County.

Notwithstanding the provisions of § 65-1641, returns of property in the city of *Florence* and in *Marlboro* County may be made upon special forms furnished by said city or county, as the case may be, through the city council or the county board of tax assessors and approved by the Comptroller General.

1942 Code § 2603; 1932 Code § 2603; Civ. C. '22 § 343; Civ. C. '12 § 295; Civ. C. '02 § 267; G. S. 213; R. S. 223; 1896 (22) 63; 1914 (28) 516; 1952 (47) 1950.

Effect of amendment.—The amendment granted by the section which was formerly extended to *Marlboro* County the right limited to the city of *Florence*.

§ 65-1646. Time for making returns in Beaufort County.

Repealed by A. & J. R. 1954 (48) 1819.

§ 65-1649.1. Same; valuations use in Beaufort County.

For the purposes of taxation in *Beaufort* County, the county auditor shall adopt the valuations placed upon property in the county by the Hunnicutt Engineering Firm, and he is hereby prohibited from making any changes whatsoever in the valuations as fixed by such firm.

1954 (48) 1946.

§ 65-1649.2. Persons revaluing property in Beaufort County may enter lands.

Any person or his agents employed by *Beaufort* County to revalue taxable property in the county may go on any lands located within the county in furtherance of such purpose. In so doing the person or any of his agents, when engaged in revaluing such lands, shall not be held to be a trespasser on such lands.

1954 (48) 1941.

ARTICLE 8.*County Auditors.***§ 65-1746.1. Same; special provision for Sumter County.**

In *Sumter* County the term of office of the county auditor shall be for four years from January first of the year following his election and all appointments to fill vacancies shall be for the remainder of the unexpired term.

1952 (47) 1937.

§ 65-1768. Same; delivery of tax books by auditor to treasurer in Sumter County.

Provisions of A. & J. R. 1953 (48) 1256 make up this section.

ARTICLE 9.*Township and Special Boards of Assessors.***§ 65-1802. Appointment in Newberry and Pickens Counties.**

Notwithstanding the provisions of § 65-1801 in *Pickens* County the township and town boards of assessors and in *Newberry* County the tax district and town boards of assessors shall be appointed by the county auditor.

1942 Code § 2737; 1932 Code § 2737; Civ. C. '22 § 469; Civ. C. '12 § 417; Civ. C. '02 § 376; 1899 (23) 116; 1900 (23) 284; 1901 (23) 671; 1908 (25) 1190; 1912 (27) 679; 1914 (28) 760; 1916 (29) 832, 835; 1917 (30) 347; 1918 (30) 722; 1919 (31) 182; 1920 (31) 780, 859; 1921 (32) 163; 1926 (34) 908; 1931 (37) 98; 1939 (41) 232; 1952 (47) 1976.

Effect of amendment.—The tax district were formerly township boards of assessors in *Newberry* County.

§ 65-1802.1. Special provision for Abbeville County.

Provisions from A. & J. R. 1953 (48) 419 and A. & J. R. 1954 (48) 1554 make up this section.

§ 65-1803. Special provisions for Richland County.

In *Richland County* outside of the city of *Columbia* the boards of assessors for the various tax districts shall consist of the boards of trustees for the respective school districts.

1942 Code § 2737; 1932 Code § 2737; Civ. C. '22 § 469; Civ. C. '12 § 417; Civ. C. '02 § 376; 1899 (23) 116; 1900 (23) 284; 1901 (23) 671; 1908 (25) 1190; 1912 (27) 679; 1914 (28) 760; 1916 (29) 832, 835; 1917 (30) 347; 1918 (30) 722; 1919 (31) 182; 1920 (31) 780, 859; 1921 (32) 163; 1926 (34) 908; 1931 (37) 98; 1939 (41) 232; 1952 (47) 2024; 1953 (48) 419; 1954 (48) 1554.

Effect of amendments. — The 1952 amendment eliminated *Darlington County* and the 1954 amendment eliminated *Abbeville County*, both of which were formerly included in this section.

§ 65-1806. Special provision for Aiken County.

In *Aiken County* there shall be appointed the following boards of assessors, to be composed of the number of members indicated; from the city of *Aiken*, three members; from the area embraced in rural *Aiken School District No. 1* on June 30 1952, nine members; from the area embraced in *Ellenton School District No. 2* on June 30 1952, three members; from the area embraced in *Gregg School District No. 3* on June 30 1952, four members; from the area embraced in *Langley-Bath-Clearwater School District No. 4* on June 30 1952, five members; from the area embraced in *Monetta School District No. 5* on June 30 1952, five members; from the city of *North Augusta*, three members; from the area embraced in rural *North Augusta School District No. 6* on June 30 1952, five members; from the area embraced in *Salley School District No. 7* on June 30 1952, four members; from the area embraced in *Wagener School District No. 8* on June 30 1952, seven members; and from the area embraced in *Windsor School District No. 9* on June 30 1952, three members.

1951 (47) 181; 1952 (47) 1924.

Effect of amendment.—Formerly most of the members were appointed from school districts. Now those members are appointed from the area embraced in such respective school districts on June 30, 1952.

§ 65-1809.1. Special provision for Darlington County.

The county manager of *Darlington County* shall appoint a board of tax assessors for each school attendance area in the county. Each board of assessors shall consist of as many members as he may determine and the members thereof shall serve at his pleasure. Vacancies, if filled, shall be filled in the same manner as original appointments. Each board shall meet within two weeks after its appointment and shall organize by electing one of the members as chairman. Each board shall have the powers and duties of tax assessors generally.

1952 (47) 2024, 2096; 1954 (48) 1724.

Effect of amendments.—Appointment of assessors devolved on county board of directors by 1952 p. 2096; however 1954 p. 1724 devolved such power on the county manager.

§ 65-1809.2. Boards for tax districts in Fairfield County.

Provisions of §§ 2 and 4 of A. & J. R. 1953 (48) 109 as amended by 1954 (48) 1839 make up this section.

§ 65-1823. Special provision for Saluda County.

Editor's note.—This section was superseded by A. & J. R. 1952 (47) 2004 providing for a board of assessors and equalization in *Saluda County* but the 1952 act was expressly repealed by A. & J. R. 1953 (48) 214.

§ 65-1828. County board of tax assessors for Berkeley County.

Repealed by A. & J. R. 1952 (47) 2029.

Cross reference.—See now § 65-1862.

§ 65-1831.1. County board of assessors for Greenwood County.

Provisions from §§ 1-5 of A. & J. R. 1953 (48) 351 make up this section.

§ 65-1832. County board of assessors for Marlboro County.

In *Marlboro* County the duties relative to the valuation, assessment and return of properties for taxation are devolved upon a board to be known as the county board of assessors, which shall be composed of five members, all of whom shall be qualified electors, as follows: one member from each of the school administrative areas in the county and, if there be less than five such school administrative areas, then there shall be one member from each of such areas and the remainder from the county at large. The board of tax assessors shall be appointed by the Governor upon the recommendation of a majority of the county legislative delegation, including the Senator, and shall serve for a term of four years.

1951 (47) 200; 1952 (47) 2153.

Effect of amendment.—The amendment provided for appointment by the Governor upon recommendation of the legislative delegation whereas formerly the section provided for appointment by the delegation without the intervention of the Governor.

§ 65-1834. County board of assessors for Horry County.

In *Horry* County the duties relative to the valuation, assessment and return of property for taxation are devolved upon a board to be known as the county board of tax assessors. The board shall be composed of twelve members as follows: one member from each township in the county and one additional member from the county at large. The board shall be appointed by the county auditor and shall serve for a term of four years.

1952 (47) 1924.

§ 65-1835. Same; executive secretary and assessors; records.

The County board of tax assessors for *Horry* County shall appoint an executive secretary whose term of office shall be for four years beginning on March 23rd of each presidential election year. He shall also be the deputy auditor and shall have such other powers and duties as may be prescribed by the board. The records of the county board of assessors and of its secretary shall constitute a part of the auditor's records. The board shall appoint assistant tax assessors in such number and for such length of service as may be provided in the annual county supply act.

1952 (47) 2153.

§§ 65-1836, 65-1837. County board of assessors for Horry County.

Repealed by A. & J. R. 1952 (47) 2153.

Cross reference.—See now §§ 65-1834, 65-1835.

§ 65-1842.1. Amount of per diem and allowance of mileage in Chesterfield County.

Provisions of § 1 of A. & J. R. 1953 (48) 360 make up this section.

ARTICLE 10.*County Board of Equalization and Similar Boards.***§ 65-1861.1. Special provision for Abbeville County.**

Provisions from A. & J. R. 1953 (48) 419 and A. & J. R. 1954 (48) 1554 make up this section.

§ 65-1862. Board of tax assessors for Berkeley County.

A board of tax assessors is hereby created for *Berkeley* County. The board of tax assessors shall be composed of one member from each of the following areas which shall constitute tax assessment areas or districts for the county: one from St. Thomas and St. Dennis which constitute old School Districts Nos. 1 and 1½; one from St. James Santee which constitutes old School Districts Nos. 2 and 2½; one from 2nd St. Stephens which constitutes old School Districts Nos. 3½, 4, 4½, 5 and 5½; one from 1st St. Stephens which constitutes old School

Districts Nos. 6 and 7; one from 1st St. Johns which constitutes old School Districts Nos. 8, 9 and 10; one from 2nd St. Johns which constitutes old School Districts Nos. 11, 12, 13, 14 and 15; one from 1st Goose Creek which constitutes old School Districts Nos. 16, 17 and 19; one from 2nd Goose Creek which constitutes old School Districts Nos. 22, 23, 24 and 25; and one from Hanahan which constitutes old School District No. 26. The members shall be appointed by the Governor upon the recommendation of a majority of the county legislative delegation. The members of the board shall hold office for a term of two years from the date of their respective appointments. Any vacancy occurring on the board by death, resignation or otherwise shall be filled for the unexpired term in the manner herein provided for the full term. The duties formerly imposed upon, and the authority vested in and exercised by, the board of tax assessors for *Berkeley* County and the board of equalization for *Berkeley* County are hereby devolved upon and vested in the board of tax assessors for *Berkeley* County.

1942 Code 2846; 1932 Code § 2755; 1931 (37) 98; 1952 (47) 2029.

Effect of amendment.—The amendment Code § 65-1828) and of equalization (1952 consolidated into one new body the former Code § 65-1862). It also prescribed a different composition for the new board.

§ 65-1864. Special provision for Cherokee County.

In *Cherokee* County each school district board of assessors shall elect a chairman and the chairmen of the districts so elected shall constitute the board of equalization.

1942 Code § 2737; 1932 Code § 2737; Civ. C. '22 § 469; Civ. C. '12 § 417; Civ. C. '02 § 376; 1899 (23) 116; 1900 (23) 284; 1901 (23) 671; 1908 (25) 1190; 1912 (27) 679; 1914 (28) 760; 1916 (29) 832, 835; 1917 (30) 347; 1918 (30) 722; 1919 (31) 182; 1920 (31) 780, 859; 1921 (32) 163; 1926 (34) 908; 1931 (37) 98; 1399 (41) 232; 1954 (48) 1842.

Effect of amendment.—Formerly the township commissioners constituted the board of equalization.

§ 65-1865.1. Special provision for Darlington County.

The chairmen of the four area boards of tax assessors, together with another person who shall be elected by the four area chairmen, shall constitute the board of tax equalization for *Darlington* County. The member elected by the four area chairmen shall serve as chairman of the board of equalization. The board of equalization shall serve as an appeal board to hear and determine appeals from the assessments of property in the county.

1952 (47) 2024.

§ 65-1865.2. Central board of equalization for Fairfield County.

The chairmen of the six district boards of tax assessors shall compose the central board of equalization for *Fairfield* County. This board shall formulate the policy for returning property for taxation in the county and shall promulgate rules and regulations to insure that all the property in the county is fairly and equally assessed to the end that all property owners shall bear their just share of the taxes paid. The chairmen composing the central board of equalization shall be called by the chairman of District 1 and shall proceed to organize by electing a permanent chairman of the board. The terms of office of the members of the board shall be two years and until their successors shall have been appointed and qualified. The members shall be paid a per diem allowance of seven dollars and fifty cents and mileage at the rate provided for by law.

1953 (48) 109.

§ 65-1865.3. District boards in Florence County.

There is hereby established in each of the four school districts of *Florence* County a district board of equalization. Each board shall consist of fifteen members who shall be appointed by the Governor for terms of four years upon the recommendation of a majority of the county legislative delegation, including the Senator. Each

board shall elect a chairman and a secretary and the boards shall meet at the times and places designated by the county auditor. The boards established under the provisions of this section shall be in addition to the equalization boards for the city of *Florence* and the town of *Lake City* in *Florence* County provided for by § 65-1867.

1952 (47) 1901.

§ 65-1865.4. **County board in Florence County.**

There is hereby established a board of equalization for *Florence* County which shall be composed of the chairmen of the four district boards of equalization together with the chairman of the city of *Florence* equalization board and the chairman of the *Lake City* equalization board. The county board of equalization may hear appeals from the district boards and may modify, reverse or alter assessments made by the district boards.

1952 (47) 1901.

§ 65-1866.1. **Special provision for Greenwood County.**

Provisions of §§ 6-9 of A. & J. R. 1953 (48) 351 make up this section.

§ 65-1867. **Special board of equalization for Lake City.**

There shall be a special town board of equalization for the town of *Lake City*, composed of three resident freeholders, to be appointed by the town council of the town. Their duties shall be the same, as affecting the property in said town and the special board of assessors for said town, as provided in § 65-1886. There may be appeals from the special town board of assessors to the special town board of equalization. The chairman of the special board of equalization shall report the result of both boards as to the assessment of all property in the town of *Lake City* to the county auditor.

1942 Code § 2859-12; 1932 Code § 2761; Civ. C. '22 § 487; 1913 (28) 200; 1952 (47) 1901.

Effect of amendment.—Formerly the decision of the special board of equalization was final and this section so provided. Now there is an appeal to the county board of equalization. See § 65-1865.4.

§ 65-1876.1. **Board of assessors and equalization in McCormick County.**

Provisions from A. & J. R. 1952 (47) 1714 make up this section.

§ 65-1878.1. **Board of tax equalization in Oconee County.**

Provisions of A. & J. R. 1954 (48) 1705 make up this section.

CHAPTER 17.

COUNTY TREASURERS AND THE COLLECTION OF TAXES.

Article 1.		Sec.
General Provisions.		
Sec.		65-2009.1. Same; special provision for Lee County.
65-1960.1. Salary in Hampton County; fees.		65-2026. Same; certain counties excepted from publication requirement.

ARTICLE 1.

General Provisions.

§ 65-1960.1. **Salary in Hampton County; fees.**

The county's share of the salary paid to the treasurer of *Hampton* County shall be a sum which, when added to the amount paid by the State, will total fifty-four hundred dollars annually. The treasurer shall pay into the county treasury all fees paid to him.

1952 (47) 1904.

§ 65-1993. Suspension of taxes of persons in armed forces in certain counties.

Cross reference. — For other provisions 44-655, 44-656, 65-1522, (10.1), and 65-1583 exempting persons in the armed forces or to 65-1586.
veterans from certain taxes, see §§ 44-464,

§ 65-2009.1. Same; special provision for Lee County.

Provisions from A. & J. R. 1953 (48) 23 make up this section.

§ 65-1965. When taxes payable; receipts for payment.

Editor's note.—Treasurer of Greenville County relieved of collecting taxes, § 65-2425.1.

§ 65-2026. Same; certain counties excepted from publication requirement.

The county treasurers of *Aiken, Beaufort, Chesterfield, Clarendon, Colleton, Edgefield, Fairfield, Florence, Greenville, Lancaster, Marion, Marlboro, Orangeburg, Pickens, Sumter, Williamsburg* and *York* Counties shall not be required or allowed, at public expense, to publish annually the itemized statements of their disbursements.

1942 Code § 2781; 1932 Code § 2829; Civ. C. '22 § 504; Civ. C. '12 § 453; Civ. C. '02 § 405; R. S. 332; 1881 (17) 892; 1889 (20) 319; 1900 (23) 355; 1906 (25) 45; 1910 (26) 632; 1932 (37) 1312; 1934 (38) 1241; 1951 (47) 311; 1954 (48) 1845.

Effect of amendment.—The amendment eliminated Chester County. This amendment effective January 1, 1955.

CHAPTER 18.

TAX COLLECTORS.

Article 5.3.**Tax Collector in Aiken County.**

Sec.
65-2207. Appointment, term, etc.

Article 11.**Delinquent Tax Collector of Colleton County.**

65-2325. Duties of collector.

Article 12.**Department of Delinquent Taxes in Darlington County.**

65-2350. Disposition of collections.

Article 17.**Tax Collector in Greenville County.**

65-2421. Establishment of office.
65-2422. Appointment; term; removal.
65-2423. Bond.
65-2424. Compensation.
65-2425. Clerical help; assistants.
65-2425.1. Duties and powers of treasurer relating to collection of taxes devolved on collector.

Sec.

65-2426. Powers of sheriff devolved on collector.
65-2427. Collections and settlements.
65-2428. Assistance to auditor.
65-2429. Records.
65-2430. Reports and settlements.

Article 19.**Tax Collector in Horry County.**

65-2466.1. Collector give notice and post real estate before advertising same for sale.

Article 20.**Delinquent Tax Collector in Kershaw County.**

65-2481. Appointment and term.

Article 23.1.**Tax Collector in Oconee County.**

65-2551. Tax collector for Oconee County.

ARTICLE 5.3.

*Tax Collector in Aiken County.***§ 65-2207. Appointment, term, etc.**

Provisions of A. & J. R. 1954 (48) 1548 make up this section.

ARTICLE 11.

*Delinquent Tax Collector of Colleton County.***§ 65-2325.—Duties of collector.**

The sheriff of *Colleton* County is relieved from the duty of collecting delinquent taxes and the delinquent tax collector is charged with this duty and to that end may

collect executions, levy, advertise and sell property for taxes and make title thereto and order possession thereof to be delivered to the purchaser with all the powers as by law conferred upon the sheriff for similar duties. The sheriff, upon the written order of the delinquent tax collector, shall take possession of property sold for taxes and to which the title has been made and deliver the possession thereof to the purchaser at such tax sale. All tax executions shall be delivered to the delinquent tax collector for collection. In all other respects the form of execution, the time of execution, the levy and the procedure in respect to the collection of delinquent tax executions shall be as heretofore provided by law for sheriffs generally in this State. The delinquent tax collector shall make appropriate deeds or bills of sale to the purchasers at tax sales for all property sold by the delinquent tax collector or previously by the sheriff of the county for which deeds have not been executed and delivered by the sheriff.

1951 (47) 261; 1952 (47) 1980.

Effect of amendment.—The amendment added the provision for making deeds to lands previously sold by the sheriff.

§ 65-2341. Creation; tax collector.

Editor's note.—A. & J. R. 1952 (47) 2096 abolished office of county manager and devolved duties and powers thereof on county board of directors thereby amending this section; then A. & J. R. 1954

(48) 1724 abolished the board and devolved its duties and powers on county manager created therein; thus net result is that the 1952 Code section is now unchanged and effective.

§ 65-2344. Assistants and employees; salaries and expenses.

Editor's note.—A. & J. R. 1952 (47) 2096 abolished office of county manager and devolved duties and powers thereof on county board of directors thereby amending this section; then A. & J. R. 1954

(48) 1724 abolished the board and devolved its duties and powers on county manager created therein; thus net result is that the 1952 Code section is now unchanged and effective.

ARTICLE 12.

Department of Delinquent Taxes in Darlington County.

§ 65-2350. Disposition of collections.

All taxes collected or received by the tax collector as provided in this article shall be paid to the county treasurer on or before the tenth day of the month next succeeding that in which they are collected. All fees, with the exception of two and one-half per cent of the five per cent the tax collector collects under the provisions of § 65-2347 on taxes and other sums levied and collected by him, which he may retain, and all other costs and charges whatsoever collected or received by the tax collector as provided in this article shall be paid to the county treasurer on or before the fifth day of the month next succeeding that in which they are collected, after deducting from the costs, fees and charges so collected all expenses necessarily incurred in the performance of his duties, including those incurred for advertisement of sales, mileage, stationery, postage, office supplies and other necessary expenses of his office, of which an itemized statement under oath, in two counterparts, shall be made, one of which shall be filed with the treasurer at the time of the tax collector's settlement with him and the other of which shall be filed at the same time with the clerk of the governing body of the county and shall be subject to the approval of such body. Any failure of the collector to pay such fees and costs to the county treasurer or to make settlement with the treasurer of all funds collected as required in this section shall be punished by a fine of not less than five dollars nor more than twenty-five dollars or imprisonment for not more than ten days.

1942 Code §§ 2854-2, 4231; 1935 (39) 30, 33, 103; 1936 (39) 1318; 1937 (40) 416; 1940 (41) 1909; 1941 (42) 287; 1953 (48) 456.

Effect of amendment.—The amendment added the exception permitting the collector to retain “two and one-half per cent of the five per cent.” Query did they really mean $2\frac{1}{2}\%$ of 5% or 50% of 5% ($2\frac{1}{2}\%$ of 100%)?

ARTICLE 17.

Tax Collector in Greenville County.§ 65-2421. **Establishment of office.**

Amended by A. & J. R. 1954 (48) 1686.

§ 65-2422. **Appointment; term; removal.**

Amended by A. & J. R. 1954 (48) 1686.

§ 65-2423. **Bond.**

Amended by A. & J. R. 1954 (48) 1686.

§ 65-2424. **Compensation.**

Amended by A. & J. R. 1954 (48) 1686.

§ 65-2425. **Clerical help; assistants.**

Amended by A. & J. R. 1954 (48) 1686.

§ 65-2425.1. **Duties and powers of treasurer relating to collection of taxes devolved on collector.**

Provisions from A. & J. R. 1954 (48) 1686 make up this section.

§ 65-2426. **Powers of sheriff devolved on collector.**

Amended by A. & J. R. 1954 (48) 1686.

§ 65-2427. **Collections and settlements.**

Amended by A. & J. R. 1954 (48) 1686.

§ 65-2428. **Assistance to auditor.**

Amended by A. & J. R. 1954 (48) 1686.

§ 65-2429. **Records.**

Amended by A. & J. R. 1954 (48) 1686.

§ 65-2430. **Reports and settlements.**

Amended by A. & J. R. 1954 (48) 1686.

ARTICLE 19.

Tax Collector in Horry County.§ 65-2466.1. **Collector give notice and post real estate before advertising same for sale.**

Provisions of A. & J. R. 1954 (48) 1689 make up this section.

ARTICLE 20.

Delinquent Tax Collector in Kershaw County.§ 65-2481. **Appointment and term.**

Amended by A. & J. R. 1953 (48) 13.

ARTICLE 23.1.

Tax Collector in Oconee County.§ 65-2551. **Tax collector for Oconee County.**

Provisions of A. & J. R. 1953 (48) 58 make up this section.

CHAPTER 19.

ERRONEOUS ASSESSMENTS AND PAYMENTS.

Article 2.

Payment under Protest and Recovery.

Sec.

65-2662. Action for recovery of taxes paid under protest.

Sec.

65-2661. Payment of tax on books of county treasurer or assessed by commission under protest.

ARTICLE 2.

Payment under Protest and Recovery.

§ 65-2661. Payment of tax on books of county treasurer or assessed by Commission under protest.

When the State or any county charges or levies any tax whatsoever against any person upon the books of any county treasurer of the State or any tax is assessed by the Commission and such treasurer or Commission shall claim the payment of the taxes so charged or assessed, or shall take any step or proceeding to collect them, the person against whom such taxes are charged or assessed or against whom such step or proceeding shall be taken, or the then owner of the legal title to property affected by such tax or a mortgagee holding a lien thereon, may if he conceives such taxes to be unjust or illegal for any cause, pay such taxes, and any penalties thereon, under protest in writing in such funds and monies as the county treasurer or Commission shall be authorized to receive. Upon such payment being made, the county treasurer or Commission shall pay the taxes and penalties so collected into the State Treasury giving notice at the time to the State Treasurer, if the collection be made by the Commission, and to the Comptroller General, if the collection be made by a county treasurer, that the payment was made under protest.

1942 Code §§ 2469, 2808; 1932 Code §§ 2469, 2846; Civ. C. '22 § 512; Civ. C. '12 § 461; Civ. C. '02 § 413; G. S. 268; R. S. 340; 1881 (17) 988; 1927 (35) 1; 1937 (40) 138; 1954 (48) 1720.

Effect of amendment.—The scope of the section as to taxes charged on county treasurer's books was reduced from state, county and "other taxes" and enlarged to include any taxes assessed by the commission, "to property affected by such tax" added after "owner of the legal title" and "may" substituted for "shall" on line—.

Applied in *Wilson v. South Carolina Tax Comm.*, 220 S. C. 171, 66 S. E. (2d) 698 (1951); *Jenkins v. Livingston*, 219 S. C. 260, 64 S. E. (2d) 883 (1951).

Cited in *Baker v. Allen*, 220 S. C. 141, 66 S. E. (2d) 618 (1951), dis. op. of Baker, C. J.

§ 65-2662. Action for recovery of taxes paid under protest.

Any person paying any taxes under protest may at any time within thirty days after making such payment, but not afterwards, bring an action against the county treasurer or the Commission, as the case may be, for the recovery thereof, in the case of a county treasurer in the court of common pleas for the county in which such taxes were payable and in the case of the Commission in any county having jurisdiction, and, if it be determined in such action that such taxes and penalties, if any, were wrongfully or illegally collected for any reason going to the merits, the court before whom the case is tried shall certify of record that such taxes were wrongfully collected and ought to be refunded and thereupon the Comptroller General shall issue his warrant for the refunding of the taxes and penalties, if any, so paid or, in the case of any taxes levied or assessed by the Commission shall issue its order to the State Treasurer to refund such taxes and penalties, if any, so paid, which shall be paid in preference to other claims against the State Treasury.

1942 Code §§ 2469, 2808; 1932 Code §§ 2469, 2846; Civ. C. '22 § 512; Civ. C. '12 § 461; Civ. C. '02 § 413; G. S. 268; R. S. 340; 1881 (17) 988; 1927 (35) 1; 1937 (40) 138; 1954 (48) 1720.

Effect of amendment.—The amendment enlarged scope of the section to include any taxes paid under protest and provided

for refunding of any taxes levied or assessed by the Commission in lieu of just income taxes.

CHAPTER 20:

ENFORCED COLLECTION OF TAXES.

Article 1.

Liens and Suits Generally.

Sec.

Sec.

65-2708. Alphabetical index of State tax liens in Lexington County.

65-2709. Alphabetical index of State tax liens in Orangeburg County.

65-2710. Alphabetical index of State tax liens in Richland County.

Article 4.

Execution, Levy, Sale, Redemption, etc.
65-2806. Same; special provisions for Clarendon County.

ARTICLE 1.

Liens and Suits Generally.§ 65-2708. **Alphabetical index of State tax liens in Lexington County.**

Provisions of A. & J. R. 1953 (48) 258 make up this section.

§ 65-2709. **Alphabetical index of State tax liens in Orangeburg County.**

Provisions of A. & J. R. 1953 (48) 263 make up this section.

§ 65-2710. **Alphabetical index of State tax liens in Richland County.**

Provisions of A. & J. R. 1953 (48) 113 make up this section.

ARTICLE 2.

Uniform Federal Tax Lien Registration Act.§ 65-2721. **Citation.**

A federal tax claim does not become a lien until it is filed in accordance with the South Carolina Recording Act, and the effect of the lien is then calculated and de-

termined under and by § 60-101. United States v. Anders Contracting Co., 111 F. Supp. 700 (1953).

§ 65-2722. **Place of filing liens and discharges thereof.****Tax lien held superior to landlord's lien.**

—The United States Government's tax lien under this section is of force against a landlord's lien which has been perfected only

from the date of recording of such tax lien. United States v. Scovil (S. C.), 78 S. E. (2d) 277 (1953).

ARTICLE 4.

Execution, Levy, Sale, Redemption, etc.§ 65-2779. **Sheriff's deed prima facie evidence of good title; limitation of action.**

This section relates to defects and irregularities in tax deeds and the proceedings

antecedent thereto. Watson v. Little . . . S. C. . . , 79 S. E. (2d) 384 (1953).

§ 65-2806. **Same; special provisions for Clarendon County.**

Amended by § 19 of A. & J. R. 1953 (48) 813.

ARTICLE 6.

Collection by State Budget and Control Board.§ 65-2857. **Sheriff's deed prima facie evidence of title.**

This section relates to defects and irregularities in tax deeds and the proceedings

antecedent thereto. Watson v. Little . . . S. C. . . , 79 S. E. (2d) 384 (1953).

§ 65-2859. **Limitation of action and requisites of proof.**

This section relates to defects and irregularities in tax deeds and the proceedings

antecedent thereto. Watson v. Little . . . S. C. . . , 79 S. E. (2d) 384 (1953).

CHAPTER 21. FORFEITED LANDS.

Article 14. Forfeited Land Commission of Dorchester County. Sec. 65-3101. Commission to have one member.	Sec. 65-3104. Compensation.
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ARTICLE 12.

Forfeited Land Commission of Darlington County.

§ 65-3071. Appointment, term and removal.

Editor's note.—A. & J. R. 1952 (47) 2096 abolished office of county manager and devolved duties and powers thereof on county board of directors thereby amending this section; then A. & J. R. 1954 (48) 1724 abolished the board and devolved its duties and powers on county manager created therein; thus net result is that the 1952 Code section is now unchanged and effective.

ARTICLE 14.

Forfeited Land Commission of Dorchester County.

§ 65-3101. Commission to have one member.

Amended by A. & J. R. 1954 (48) 1566.

§ 65-3104. Compensation.

The member of the forfeited land commission shall receive for his services each year out of the funds in the hands of the commission ten per cent of the gross sales price of any and all lands or property sold in that year and ten per cent of the gross revenues and income otherwise received and also such other compensation as the General Assembly may provide.

1942 Code § 2856-2; 1941 (42) 17; 1952 (47) 1699; 1954 (48) 1566.

Effect of amendment.—The amendment compensation as the General Assembly added the phrase “and also such other may provide.”

Title 66.

Trade and Commerce.*

Chap. 3. Weights and Measures, § 66-152.1.

4. Labels, Trademarks, etc., §§ 66-171 to 66-213.

6. Gasoline, Liquefied Petroleum Gas, Lubricating Oils, etc., §§ 66-431 to 66-440.15.

8. Fireworks, §§ 66-561 to 66-567.

CHAPTER 2.

TRUSTS, MONOPOLIES AND UNFAIR COMPETITION.

ARTICLE 1.

Combinations Lessening Competition.

§ 66-51. Trusts and combination declared against public policy.

This section does not apply to individual employees of corporations acting with such employer corporations, as such employee or employees cannot be counted to make up the second party to the scheme or arrangement proscribed by this section. A

* The last reference in the footnote on page 805 of Vol. 6, 1952 Code, should be to §§ 32-1801 to 32-1805.

corporation can act only through its agents and employees, and to hold otherwise would be holding that a corporation could conspire with itself and open every corporation to charges similar to those in this case when its officers, agents and servants formulated plans to further the corporate business and meet competition by reducing prices or other methods. *State v. National Linen Service Corp.*, _____ S. C. _____, 81

S. E. (2d) 342 (1954).
And demurrer proper where such parties charged.—In action charging defendants with scheme to put plaintiff out of business in violation of this section, demurrer was properly sustained where it appeared that the persons charged were a corporation and its employees. *State v. National Linen Service Corp.*, _____ S. C. _____, 81 S. E. (2d) 342 (1954).

§ 66-52. Violation to forfeit charter; effect on foreign corporation.

Statutory provision which would work a forfeiture requires strict construction, and one who seeks to recover penalty for failure of another to discharge some duty imposed by law must bring case clearly

within language and meaning of statute awarding penalty. *State v. National Linen Service Corp.*, _____ S. C. _____, 81 S. E. (2d) 342 (1954).

CHAPTER 3.

WEIGHTS AND MEASURES.

Sec.
66-152.1. Weighing devices for which fees are charged subject to chapter.

§ 66-152.1. Weighing devices for which fees are charged subject to chapter.

When a fee is paid for service rendered by any weighing device, such weighing device shall be subject to the standards and the inspection provided by this chapter and the person owning or operating such device shall be subject to the penalties herein provided.

1953 (48) 322.

CHAPTER 4.

LABELS, TRADEMARKS, ETC.

Article 1.
Generally.
Sec.
66-171. Definitions.
66-172. Classes of goods.
66-173. Application for registration.
66-174. Single application not to include goods of different classes.
66-175. What trademarks not to be registered.
66-176. Issuance of certificate of registration.
66-177. Term of registration; renewals.
66-178. Notice of necessity of renewals.
66-179. Expiration and renewal of trademarks previously registered.
66-180. Cancellation.

Sec.
66-181. Assignment of registered trade marks.
66-182. Records public.
66-183. Civil liability for fraudulent registration.
66-184. Civil liability for certain uses of imitation of registered trademark.
66-185. Owner may enjoin manufacture, use, display or sale of imitations; profits and damages.
66-186. Certificate of registration as evidence.
66-187. Rights acquired in trademarks at common law.
66-201 to 66-204. [Repealed.]
66-206 to 66-213. [Repealed.]

ARTICLE 1.

Generally.

§ 66-171. Definitions.

(1) The term “*trademark*” as used herein means any word, name, symbol or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(2) The term “*applicant*” as used in §§ 66-172, 66-173, 66-175 and 66-176 embraces the person filing an application for registration of a trademark under § 66-173, his legal representatives, successors or assigns.

(3) The term "*registrant*" as used in §§ 66-178, 66-180, 66-184 and 66-185 embraces the person to whom the registration of a trademark under §§ 66-176, 66-177 or 66-179 is issued, his legal representatives, successors or assigns.

(4) For the purposes of §§ 66-173 to 66-176, 66-181, 66-184 and 66-185, a trademark shall be deemed to be "*used*" in this State when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this State.

1952 (47) 1845.

§ 66-172. Classes of goods.

The following general classes of goods are established for convenience of administration of §§ 66-173 to 66-186, but not to limit or extend the applicant's or registrant's rights: .

- (1) Raw or partly prepared materials;
- (2) Receptacles;
- (3) Baggage, animal equipments, portfolios and pocketbooks;
- (4) Abrasives and polishing materials;
- (5) Adhesives;
- (6) Chemicals and chemical compositions;
- (7) Cordage;
- (8) Smokers' articles, not including tobacco products;
- (9) Explosives, firearms, equipment and projectiles;
- (10) Fertilizers;
- (11) Inks and inking materials;
- (12) Construction materials;
- (13) Hardware and plumbing and steam-fitting supplies;
- (14) Metals and metal castings and forgings;
- (15) Oils and greases;
- (16) Paints and painters' materials;
- (17) Tobacco products;
- (18) Medicines and pharmaceutical preparations;
- (19) Vehicles;
- (20) Linoleum and oiled cloth;
- (21) Electrical apparatus, machines and supplies;
- (22) Games, toys and sporting goods;
- (23) Cutlery, machinery and tools and parts thereof;
- (24) Laundry appliances and machines;
- (25) Locks and safes;
- (26) Measuring and scientific appliances;
- (27) Horological instruments;
- (28) Jewelry and precious metalware;
- (29) Brooms, brushes and dusters;
- (30) Crockery, earthenware and porcelain;
- (31) Filters and refrigerators;
- (32) Furniture and upholstery;
- (33) Glassware;
- (34) Heating, lighting and ventilating apparatus;
- (35) Belting, hose, machinery packing and nonmetallic tires;
- (36) Musical instruments and supplies;
- (37) Paper and stationery;
- (38) Prints and publications;
- (39) Clothing;
- (40) Fancy goods, furnishings and notions;
- (41) Canes, parasols and umbrellas;

- (42) Knitted, netted and textile fabrics and substitutes therefor;
 - (43) Thread and yarn;
 - (44) Dental, medical and surgical appliances;
 - (45) Soft drinks and carbonated waters;
 - (46) Foods and ingredients of foods;
 - (47) Wines;
 - (48) Malt beverages and liquors;
 - (49) Distilled alcoholic liquors;
 - (50) Merchandise not otherwise classified;
 - (51) Cosmetics and toilet preparations; and
 - (52) Detergents and soaps.
- 1952 (47) 1845.

§ 66-173. Application for registration.

Subject to the limitations set forth in this article, any person who adopts and uses a trademark in this State may file in the office of the Secretary of State, on a form to be furnished by the Secretary, an application for registration of that trademark setting forth, but not limited to, the following information:

- (1) The name and business address of the person applying for such registration and, if a corporation, the state of incorporation;
- (2) The goods in connection with which the mark is used, the mode or manner in which the mark is used in connection with such goods and the class in which such goods fall;
- (3) The date when the trademark was first used anywhere and the date when it was first used in this State by the applicant or his predecessor in business;
- (4) A statement that the applicant is the owner of the trademark and that no other person has the right to use such trademark in this State either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor; and
- (5) A statement that no other person has a registration of the same or a similar trademark in the United States Patent Office for the same or similar goods or a statement that the applicant is the owner of a concurrent registration in the United States Patent Office of his trademark covering an area including this State.

The application shall be (a) signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying, (b) accompanied by a specimen or facsimile of such trademark in triplicate and (c) accompanied by a filing fee of fifteen dollars payable to the Secretary of State.

1952 (47) 1845.

§ 66-174. Single application not to include goods of different classes.

A single application for registration of a trademark may include any or all goods upon which the trademark is actually being used, comprised in a single class, but in no event shall a single application include goods upon which the trademark is being used which fall within different classes of goods.

1952 (47) 1845.

§ 66-175. What trademarks not to be registered.

A trademark by which the goods of any applicant for registration may be distinguished from the goods of others shall not be registered if it:

- (1) Consists of or comprises immoral, deceptive or scandalous matter;
- (2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or national symbols or bring them into contempt or disrepute;
- (3) Consists of or comprises the flag or coat of arms or other insignia of the United States, of any state or municipality or of any foreign nation or any simulation thereof;

(4) Consists of or comprises the name, signature or portrait of any living individual, except with his written consent;

(5) Consists of a mark which, (a) when applied to the goods of the applicant, is merely descriptive or deceptively misdescriptive of them, (b) when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them or (c) is primarily merely a surname;

(6) Consists of or comprises a trademark which so resembles a trademark registered in this State or a trademark or trade name previously used in this State by another and not abandoned as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive; or

(7) Consists of or comprises a trademark which so resembles a trademark registered in the United States Patent Office by another and not abandoned as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive. But should the applicant prove that he is the owner of a concurrent registration in the United States Patent Office of his trademark covering an area including this State, applicant may register his trademark hereunder.

1952 (47) 1845.

§ 66-176. Issuance of certificate of registration.

Upon compliance by the applicant with the requirements of §§ 66-173 to 66-175, the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the State and it shall show the name and business address and, if a corporation, the state of incorporation of the person claiming ownership of the trademark, the date claimed for the first use of the trademark anywhere and the date claimed for the first use of the trademark in this State, the class of goods and description of the goods on which the trademark is used, a reproduction of the trademark, the registration date and the term of the registration.

1952 (47) 1845.

§ 66-177. Term of registration; renewals.

Registration of a trademark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term on a form to be furnished by the Secretary of State, the registration may be renewed for a like term. A renewal fee of five dollars payable to the Secretary of State shall accompany the application for renewal of the registration. A trademark registration may be renewed for successive periods of ten years in like manner.

1952 (47) 1845.

§ 66-178. Notice of necessity of renewals.

The Secretary of State shall notify registrants of trademarks hereunder of the necessity of renewal within the year next preceding the expiration of the ten years from the date of registration by writing to the last known address of the registrants.

1952 (47) 1845.

§ 66-179. Expiration and renewal of trademarks previously registered.

Any registration in force on February 14 1952 shall expire ten years from the date of the registration or of the last renewal thereof or on February 14 1953, whichever is later, and may be renewed by filing an application with the Secretary of State on a form furnished by him and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration.

1952 (47) 1845.

§ 66-180. Cancellation.

The Secretary of State shall cancel from the register:

(1) After February 14 1953 all registrations under prior acts which are more than ten years old and not renewed in accordance with §§ 66-177 to 66-179;

(2) Any registration concerning which the Secretary of State shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(3) All registrations granted under §§ 66-176 to 66-179 and not renewed in accordance with the provisions hereof;

(4) Any registration concerning which a court of competent jurisdiction shall find that (a) the registered trademark has been abandoned, (b) the registrant is not the owner of the trademark, (c) the registration was granted improperly, (d) the registration was obtained fraudulently or (e) the registered trademark is so similar to a trademark registered by another person in the United States Patent Office prior to the date of the filing of the application for registration by the registrant hereunder and not abandoned as to be likely to cause confusion or mistake or to deceive, except that, if the registrant should prove that he is the owner of a concurrent registration of his trademark in the United States Patent Office covering an area including this State, the registration hereunder shall not be cancelled; and

(5) When a court of competent jurisdiction shall order cancellation of a registration on any ground.

1952 (47) 1845.

§ 66-181. Assignment of registered trademarks.

Any trademark and its registration hereunder shall be assignable with the good will of the business in which the trademark is used or with that part of the good will of the business connected with the use of and symbolized by the trademark. Such an assignment shall be by an instrument in writing duly executed and may be recorded with the Secretary of State upon the payment of a fee of three dollars payable to the Secretary of State who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under §§ 66-176 to 66-179 shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the Secretary of State within three months after the date thereof or prior to such subsequent purchase.

1952 (47) 1845.

§ 66-182. Records public.

The Secretary of State shall keep for public examination a record of all trademarks registered or renewed under §§ 66-176 to 66-179.

1952 (47) 1845.

§ 66-183. Civil liability for fraudulent registration.

Any person who shall for himself or on behalf of any other person procure the filing or registration of any trademark in the office of the Secretary of State under the provisions hereof by knowingly making any false or fraudulent representation or declaration, verbally or in writing or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the person injured thereby in any court of competent jurisdiction.

1952 (47) 1845.

§ 66-184. Civil liability for certain uses of imitation of registered trademark.

Subject to the provisions of § 66-187 any person who shall

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a trademark registered under §§ 66-176 to 66-179 in connection with the sale, offering for sale or advertisement of any goods on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods; or

(2) Reproduce, counterfeit, copy or colorably imitate any such trademark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in conjunction with the sale or other distribution in this State of such goods;

Shall be liable to a civil action by the owner of such registered trademark for any or all of the remedies provided in § 66-185 except that under paragraph (2) of this section the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such trademark is intended to be used to cause confusion or mistake or to deceive.

1952 (47) 1845.

§ 66-185. Owner may enjoin manufacture, use, display or sale of imitations; profits and damages.

Any owner of a trademark registered under §§ 66-176 to 66-179 may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the court deemed just and reasonable and may require the defendant to pay to such owner all profits derived therefrom and all damages suffered by reason of such wrongful manufacture, use, display or sale. Such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this State.

1952 (47) 1845.

§ 66-186. Certificate of registration as evidence.

Any certificate of registration issued by the Secretary of State under the provisions hereof or a copy thereof duly certified by the Secretary of State shall be admissible in evidence as competent and sufficient proof of the registration of such trademark in any action or judicial proceedings in any court of this State.

1952 (47) 1845.

§ 66-187. Rights acquired in trademarks at common law.

Nothing herein shall adversely affect the rights or the enforcement of rights in trademarks acquired in good faith at any time at common law.

1952 (47) 1845.

§§ 66-201 to 66-204. Recording labels; advertisement thereof; imitations.

Repealed by A. & J. R. 1952 (47) 1845.

Cross reference.—See now §§ 66-171 to 66-187.

§§ 66-206 to 66-213. Fraudulent registration of labels; penalties; injunctions; unlawful use of name or seal; procedural matters, etc.

Repealed by A. & J. R. 1952 (47) 1845.

Cross reference.—See now §§ 66-171 to 66-187.

CHAPTER 6.

GASOLINE, LIQUEFIED PETROLEUM GAS, LUBRICATING OILS, ETC.

Article 2.

Liquefied Petroleum Gas.

Sec.

66-440.6. Regulations for equipment for handling, etc.

66-440.7. National Board of Fire Underwriters' pamphlet No. 58 minimum requirements.

66-440.8. Inspection of vehicles; certificate.

66-440.9. Electrical apparatus not to be grounded to liquefied petroleum gas appliance.

66-440.10. Pilot required for heating appliance in public place.

66-440.11. Inspection of premises.

66-440.12. Investigations.

66-440.13. Correction of hazardous conditions.

66-440.14. Report of fires and explosions.

66-440.15. Penalties.

Sec.

66-431 to 66-436. [Repealed.]

66-437. Liquefied petroleum gas defined.

66-438. Application of article to by-products.

66-439. Liquefied Petroleum Gas Board.

66-440. License required to manufacture, sell, transport, install or service.

66-440.1. License fee.

66-440.2. Insurance, etc., required of licensee.

66-440.3. Insurer to certify coverage to Board.

66-440.4. Sales for resale to be made only to licensed persons.

66-440.5. Installations, etc., to be made only by persons certified as competent.

ARTICLE 2.

Liquefied Petroleum Gas.

§§ 66-431 to 66-436. Liquefied petroleum gas.

Repealed by A. & J. R. 1952 (47) 1945.

Cross reference.—See now §§ 66-437 to 66-440.15.

§ 66-437. Liquefied petroleum gas defined.

The term "*liquefied petroleum gas*," as used in this article, shall mean and include any material which is composed predominantly of any of the following hydrocarbons or mixtures thereof: propane, propylene, butanes (normal butane or isobutane) and butylenes.

1952 (47) 1945.

§ 66-438. Application of article to by-products.

The provisions of this article shall not apply to liquefied petroleum gases used as a by-product in the manufacture of any product.

1952 (47) 1945.

§ 66-439. Liquefied Petroleum Gas Board.

There is hereby created the Liquefied Petroleum Gas Board which shall be composed of three members. One member shall be the Insurance Commissioner, ex officio, who shall serve as chairman, one member shall be a member of the State Firemen's Association who shall be appointed by the president of the association for a term of one year and the third member shall be a licensed liquefied gas dealer who shall be appointed by the president of the South Carolina Liquefied Petroleum Gas Association for a term of one year.

1952 (47) 1945.

§ 66-440. License required to manufacture, sell, transport, install or service.

All persons engaging in the manufacture, distribution, sale, storage or transporting by tank truck or tank trailer or in cylinder liquefied petroleum gases or engaged in the physical installation, servicing, repairing adjusting or connecting of appliances to liquefied petroleum gas systems shall make application to the Board to obtain a license to do business in the State. The Board may revoke or

suspend any such license when it is found that any person engaging in this business has violated the provisions of this article.

1952 (47) 1945; 1953 (48) 276.

Effect of amendment.—The 1953 amendment added the words “or suspend” in the second sentence.

§ 66-440.1. License fee.

The license fee for the license required by § 66-440 shall be one hundred dollars annually for each dealer and in addition thereto each branch or subdealer shall pay a license fee of twenty-five dollars. All moneys derived from these licenses shall be used for the administration of this article. The Commissioner shall keep a separate account of all moneys received and disbursed under the provisions of this section and shall include the accounting in his annual report.

1952 (47) 1945.

§ 66-440.2. Insurance, etc., required of licensee.

Every person engaged in any of the activities mentioned in § 66-440 shall, as a prerequisite to obtaining a license, furnish the Board evidence of having and keeping in force at all times insurance coverage with an insurance company licensed to do business in this State. The insurance shall cover liability against damage from automobiles, employers' liability, manufacturers' or contractors' public liability, manufacturers' or contractors' property damage, products, property and liability damage and shall be in such amounts as the Board may direct, not exceeding ten thousand dollars for any single liability. If the applicant for license furnishes the Board with a sworn affidavit setting forth that he is not and will not be exposed to one or more of the liabilities covered by the insurance referred to in this section, then the board may waive the certification of the type of insurance referred to in the affidavit. Any applicant for license who is covered by workmen's compensation insurance will not be required to have employers' liability insurance certified. In lieu of insurance an applicant for a license may furnish satisfactory financial responsibility to provide for such liabilities or furnish a bond of a licensed surety company, which shall be approved as to form and sufficiency by the Attorney General, in the amount of twenty thousand dollars. The bond shall be conditioned to pay any final judgment entered against the licensee in a court of competent jurisdiction in this State and to pay any liability arising during the term of the bond. Any judgment obtained shall be a lien upon the bond.

1952 (47) 1945; 1953 (48) 275.

Effect of amendment.—The 1953 amendment added the third and fourth sentences.

§ 66-440.3. Insurer to certify coverage to Board.

When insurance is procured or a bond secured the company writing the insurance or bond shall certify to the Board that it has issued coverage in accordance with § 66-440.2. No license shall be renewed to any dealer who does not furnish to the Board evidence that such coverage has been obtained for the year for which the license is issued.

1952 (47) 1945.

§ 66-440.4. Sales for resale to be made only to licensed persons.

Before any dealer, branch or subdealer shall sell any liquefied petroleum gas to any person for resale to the public, he shall first ascertain that such person is licensed and qualified by the Board to resell such liquefied petroleum gas. Any dealer, branch or subdealer wilfully violating the provision of this section shall be subject to a fine of not less than five hundred dollars or imprisonment in the discretion of the court. But a resale by any individual not licensed to sell such gas shall not make the dealer responsible for such resale.

1953 (48) 271.

§ 66-440.5. Installations, etc., to be made only by persons certified as competent.

It shall be unlawful for any person, whether an employee of a licensed gas dealer or otherwise, physically to install, service, repair, adjust, connect or disconnect any gas appliances to or from any liquefied petroleum gas system unless such person shall be certified as competent by a licensed gas dealer employing such person. Such certification by the dealer shall be under oath on forms prescribed by the Board and shall run concurrent with the dealer's license. The Board may revoke any such certification for cause. The provisions of this section requiring certification shall not apply to common laborers working under the supervision of a certified person.

1952 (48) 276.

§ 66-440.6. Regulations for equipment for handling, etc.

The Insurance Commissioner shall make, promulgate and enforce regulations setting forth minimum general standards covering the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck or tank trailer and utilizing liquefied petroleum gases and specifying the odorization of such gases and the degree thereof. Such regulations shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such materials and shall be in substantial conformity with the generally accepted standards of safety concerning the subject matter. Such regulations shall be adopted by the Insurance Commissioner only after a public hearing. A copy of all such rules and regulations made and promulgated by the Insurance Commissioner shall be filed with the Secretary of State.

1952 (47) 1945.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Insurance Commissioner, Volume 7.

§ 66-440.7. National Board of Fire Underwriters' pamphlet No. 58 minimum requirements.

The current edition and any amendments which may be made to the National Board of Fire Underwriters' pamphlet No. 58 shall be followed in its entirety as the minimum requirements for public safety pertaining to any of the subject matter covered by this article. A copy of the pamphlet, with any amendments, shall be filed in the office of the Secretary of State and shall be open to public inspection.

1952 (47) 1945.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Insurance Commissioner, Volume 7.

Editor's Note: July, 1953, edition of National Board of Fire Underwriters' pamphlet No. 58 filed in Secretary of State's office April 10, 1954.

§ 66-440.8. Inspection of vehicles; certificate.

Any vehicle transporting liquefied petroleum gases shall be fully inspected and the operator or owner shall obtain from the Insurance Commissioner a certificate showing that the vehicle is in proper condition to transport such material. The certificate shall be displayed upon the windshield of the vehicle in question. The certificate shall be renewed annually and may be required to be renewed quarterly, if deemed necessary for the public safety. There shall be no fee or charge for the issuance of the certificate.

1952 (47) 1945.

§ 66-440.9. Electrical apparatus not to be grounded to liquefied petroleum gas appliance.

Electrical circuits or electrical appliances, such as radios, telephones or other electrical apparatus, shall not be grounded to any liquefied petroleum gas system or appliance. Any dealer or his agent finding a violation of this section shall re-

quest the owner of the property to remove the ground. Should the owner fail to comply with this request the dealer or his agent shall immediately report that fact to the Insurance Commissioner.

1952 (47) 1945.

§ 66-440.10. Pilot required for heating appliance in public place.

All heating appliances installed for use in any hotel, tourist home, school, church, theater, auditorium, institutional building, hospital, nursing home, convalescent home or other place of public assembly or rest shall be equipped with a pilot having a one hundred percent safety cutoff valve of an automatic operating type. The pilot safety valve shall have positive control of the flow of gas to the appliance burners in public places for sleeping purposes.

1952 (47) 1945.

§ 66-440.11. Inspection of premises.

The Insurance Commissioner or his inspectors shall be permitted to enter during reasonable business hours upon the premises of any person engaged in the liquefied petroleum gas industry in any of its phases to inspect any properties or installations that relate in any way to the safe and proper operation of the business.

1952 (47) 1945.

§ 66-440.12. Investigations.

The Commissioner or his deputy appointed to conduct and supervise the business of liquefied gas may make such investigations and examinations as they may deem necessary for the public safety.

1952 (47) 1945.

§ 66-440.13. Correction of hazardous conditions.

When a condition is found that is hazardous to the public safety, the Commissioner or his deputy shall order it to be removed or corrected. The order shall be in writing and served by registered mail. If the condition is not corrected within ten days, the Commissioner shall impose a fine of fifty dollars for each day's neglect.

1952 (47) 1945.

§ 66-440.14. Report of fires and explosions.

All owners, managers or operators of all vehicles or equipment covered under this article shall within twenty-four hours thereafter make a report to the Insurance Commissioner of all fires and explosions in connection with such equipment of accidental or incendiary origin of which they have knowledge, with as complete detail as possible, together with such evidence as they have obtained after investigation.

1952 (47) 1945.

§ 66-440.15. Penalties.

Any person violating any of the provisions of this article or any of the rules and regulations made and promulgated by the Insurance Commissioner under the provisions hereof, when a copy thereof shall have been filed with the Secretary of State, as above provided, shall be guilty of a misdemeanor and, upon conviction, shall be sentenced to a fine of not more than one hundred dollars or imprisonment for not more than thirty days.

1952 (47) 1945.

CHAPTER 8.

FIREWORKS.

Article 2.

Cherry Grove Beach and East Cherry Grove Beach in Horry County.

Sec.

66-561. Use, shoot, sell, etc., fireworks which emit explosive noise prohibited.

66-562. Penalties.

Article 3.

Certain Coastal Area in Horry County.

Sec.

66-565. Use, shoot, sell, etc., fireworks which emit explosive noise prohibited.

66-566. Possession of loose restricted fireworks.

66-567. Penalties.

ARTICLE 2.

*Cherry Grove Beach and East Cherry Grove Beach in Horry County.***§ 66-561. Use, shoot, sell, etc., fireworks which emit explosive noise prohibited.**

Within the borders of Cherry Grove Beach and East Cherry Grove Beach developments, as shown on maps and blueprints on record in the Book of Maps in the office of the clerk of court of *Horry County*, and down to the low watermark of the ocean strand bordering these developments, it shall be unlawful for any person to use, fire, shoot, discharge, sell, offer for sale, store, exchange, give away or possess any fireworks which in their discharge emit an explosive noise.

1954 (48) 1508.

§ 66-562. Penalties.

Any person violating the provisions of § 66-561 shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned for a period of not more than thirty days, or both, within the discretion of the court. Each day's offense shall constitute a separate offense.

1954 (48) 1508.

ARTICLE 3.

*Certain Coastal Area in Horry County.***§ 66-565. Use, shoot, sell, etc., fireworks which emit explosive noise prohibited.**

It shall be unlawful for any person in the area in *Horry County*

Beginning at the south-western borders of Windy Hill Beach which is commonly known as White Point Swash and extending northeastward to the South Carolina-North Carolina State boundary line; and extending from the low watermark of the Atlantic Ocean with Stateline to the intersection of the Old Hickman's Cross Roads, Brooksville, Wampee, county or State road; thence running with said described road southwestward to the intersection of State Highway No. 90 at Wampee; thence back to the beginning point across the Intracoastal Waterway to the borders of the Atlantic Ocean at low watermark on the most southern point of Windy Hill Beach; and being that entire area lying between the low watermark of the Atlantic Ocean and the borders of the old Brooksville county road, which extends from just south of Hickman's Cross Roads to the general area of Wampee and intersecting with Highway No. 90; but excluding the beach areas known as Crescent Beach, Ocean Drive Beach, Tilghman Beach, Cherry Grove Beach, and East Cherry Grove Beach, which already have anti-fireworks law,

Except during the months of December, January, February, March and April or the fourth day of July between sunrise and ten o'clock at night, to use, fire, shoot, discharge, sell, offer for sale, exchange, give away or possess any fireworks which in their discharge emit an explosive noise. Business establishments within such area not prohibited by an ordinance or statutory law may store and sell silent fireworks

and small fire crackers as defined in § 66-552, if such business establishments securely wrap and seal with tape any fireworks sold which emit an explosive sound.
1954 (48) 1818.

§ 66-566. Possession of loose restricted fireworks.

Any user or any possessor of restricted fireworks in the area described in § 66-565 who has on his person or within his vehicle or on his premises, any unsealed or broken package of restricted fireworks shall be deemed to have violated the provisions of this article.

1954 (48) 1818.

§ 66-567. Penalties.

Any person violating the provisions of this article shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than twenty-five dollars or imprisoned for a period of not more than thirty days, within the discretion of the court. The violation of any of the provisions of this article on separate days shall constitute separate and distinct offenses.

1954 (48) 1818.

Title 67.

Trusts and Fiduciaries.

Chap. 3. Fiduciaries Generally, § 67-58.

4. Charitable Trusts, §§ 67-71 to 67-75.

CHAPTER 3.

FIDUCIARIES GENERALLY.

Sec.

67-58. Investments by fiduciaries, etc.

§ 67-58. Investments by fiduciaries, etc.

Trust funds in the hands of any trustee, guardian, committee, executor, administrator or other fiduciary may be invested by such fiduciary in such securities or property as may be authorized by the will, deed, order, decree, gift, grant or other instrument creating or fixing the trust and, when not otherwise provided in such instrument, may be deposited in whole or in part at current savings bank interest rates in any bank which is a member of the Federal Deposit Insurance Corporation or in any Federal Savings and Loan Association or may be invested in whole or in part in all or any of the following: bonds or notes of the United States, Federal Farm Loan Bonds issued pursuant to an act of Congress known as the Federal Farm Loan Act and acts amendatory thereof and supplementary thereto, bonds issued by the Federal Farm Mortgage Corporation pursuant to an act of Congress known as the Federal Farm Mortgage Corporation Act, Federal Intermediate Credit Bank debentures issued pursuant to the Federal Farm Loan Act as amended, debentures issued by Central Bank for Cooperatives organized under the Farm Credit Act of 1933, bonds or obligations of any state of the United States, bonds or obligations of any political subdivision or municipal corporation of any such state, bonds or obligations secured by first mortgage of real estate in any state of the United States, preferred or common stock of any corporation, shares of any management type investment company or investment trust which is registered under the Federal Investment Company Act of 1940 as from time to time amended and shares of any building and loan association organized and existing under the laws of this State when such shares are insured by the Federal Savings and Loan Insurance Corporation: *provided, however:*

1952 (47) 1894.

Effect of amendment.—The amendment added Federal Intermediate Credit Bank debentures and debentures of the Central Bank for Cooperatives. Only the first para-

graph of the section was affected and the remaining paragraphs are therefore not set out above.

CHAPTER 4.

CHARITABLE TRUSTS.

Sec.

67-71. Copy of trust instrument to be filed.

67-72. Annual report.

67-73. Action to compel compliance.

Sec.

67-74. Rules and regulations.

67-75. Exemptions.

§ 67-71. Copy of trust instrument to be filed.

The trustees of charitable trusts in existence under the laws of this State on July 1 1953 were required to file a certified copy of the trust instrument with the Attorney General within ninety days after said date and the trustees of charitable trusts thereafter created under the laws of this State have been and shall hereafter be required to file such a copy of the trust instrument with the Attorney General within sixty days after the creation of the trust.

1953 (48) 347.

§ 67-72. Annual report.

Trustees of charitable trusts shall submit an annual report to the Attorney General which shall include a complete financial statement relating to the trust property during the preceding year, a summary of the acts of the trustees in their capacity as such, the name and address of each trustee and, if a trustee is a corporation, the name and address of each director and officer thereof. The first report submitted shall include an itemized statement of the property which passed into the hands of the trustees upon the creation of the trust and every report shall include a statement of the trust property in the hands of the trustee both at the beginning and the end of the year for which the report is made.

1953 (48) 347.

§ 67-73. Action to compel compliance.

Upon the failure of the trustees to discharge their duties under this chapter or when it appears that the trustees are not properly discharging the duties imposed upon them by the trust the Attorney General shall bring an action to compel their compliance with this chapter or to compel them to discharge the duties imposed upon them by the trust, as the case may be.

1953 (48) 347.

§ 67-74. Rules and regulations.

The Attorney General may make rules and regulations relating to the time for submission of, and the information to be contained in, the reports required by this chapter.

1953 (48) 347.

§ 67-75. Exemptions.

This chapter shall not apply to trusts or trustees of the following: churches, cemeteries, orphanages operated in conjunction with churches, hospitals, colleges or universities and school districts, nor shall it apply to banking institutions which act as trustees under the supervision of the State Board of Bank Control or under the supervision of Federal banking agencies.

1953 (48) 347.

Title 68.**Unemployment Compensation.**

- Chap. 1. General Provisions, §§ 68-7 to 68-34.
 3. Benefits, § 68-108.
 4. Claims for Benefits, §§ 68-155 to 68-185.1.
 5. Employer's Coverage, §§ 62-252, 68-253.

CHAPTER 1.**GENERAL PROVISIONS.**

Sec.
 68-7. Benefit year.
 68-19. Wages.

Sec.
 68-34. [Repealed.]

§ 68-1. Short title.

Liberal construction.—While this title is to be liberally construed in order to effect its beneficent purpose, the court is not at liberty to adopt a construction which is wholly beyond the limits of the

plain legislative intent. *Stone Mfg. Co. v. South Carolina Employment Security Comm.*, 219 S. C. 239, 64 S. E. (2d) 644 (1951).

§ 68-6. Base period.

There must be a valid claim for benefits before a base period can be determined. And where a claimant files a claim for benefits for which he is not eligible under § 68-113 because not available for

work, such does not constitute a valid claim. *Hartsville Cotton Mill v. South Carolina Employment Security Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 (1953).

§ 68-7. Benefit year.

"Benefit year" with respect to any individual means the one year period beginning with the first day of the first week with respect to which the individual first files a request for a determination of his status as an insured worker and thereafter the one year period beginning with the first day of the first week with respect to which the individual next files a request for a determination of his status as an insured worker after the termination of his last preceding benefit year. Any request made in accordance with § 68-151 shall establish a benefit year for the purpose of this section if the individual has been paid wages for insured work as required under item 5 of § 68-113.

1942 Code § 7035-99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1952 (47) 1977; 1954 (48) 1704.

Effect of amendments.—The 1952 amendment substituted the expression "one year period" twice in the section for "the fifty-two consecutive-week period." The 1954 amendment changed the inception of one year period to filing request for determination of status, etc. from filing claim for benefits; and also substituted "request" for "claim for benefits" and "establish a benefit year" for "be deemed to be a valid claim" in

last sentence.

There must be a valid claim for benefits before a benefit year can be determined. And where a claimant files a claim for benefits for which he is not eligible under § 68-113 because not available for work, such does not constitute a valid claim. *Hartsville Cotton Mill v. South Carolina Employment Security Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 (1953).

§ 68-8. Benefits.

Quoted in *Hartsville Cotton Mill v. South Carolina employment Security*

Comm., 224 S. C. 407, 79 S. E. (2d) 381 (1953).

§ 68-19. Wages.

(3) The payment by an employing unit (without deduction from the remuneration of an individual in its employ) of the tax imposed upon an individual in its employ under Section 1400 of the Federal Internal Revenue Code;

(4) Dismissal payments which the employing unit is not legally required to make; or

(5) Any amounts received from the State or the Federal Government by members of the South Carolina National Guard, the United States Naval Reserve, the Officers Reserve Corps, the Enlisted Reserve Corps and the Reserve Corps of Marines as drill pay, including longevity pay and allowances.

If an employer (hereinafter referred to as the successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as the predecessor employer) or used in a separate unit of a trade or business of a predecessor and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration with respect to employment equal to three thousand dollars to such individual during such calendar year, any remuneration with respect to employment paid to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer.

1952 (47) 1887.

Effect of amendment.—The amendment added the last paragraph and paragraph (5) and consequently the punctuation at the end of paragraph (4) was changed and the word "or" shifted from the end of

paragraph (3) to the end of paragraph (4). The paragraphs ahead of paragraph (3) were not affected and are therefore not set out above.

§ 68-34. Stamp plan.

Repealed by A. & J. R. 1952 (47) 1886.

§ 68-36. Declaration of State public policy.

Declaration of Policy.

While the general declarations in this section are subject to any words of particular or restricted import subsequently appearing in this title, the subsequent provisions as to eligibility or ineligibility for compensation must all be read and construed as subject to the basic and fundamental declaration set out in this section. *Stone Mfg. Co. v. South Carolina Employment Security Comm.*, 219 S. C. 239, 64 S. E. (2d) 644 (1951).

No benefits where personal circumstances cause unemployment.

In accord with paragraph under this catchline in Code. See *Stone Mfg. Co. v. South Carolina Employment Security Comm.*, 219 S. C. 239, 64 S. E. (2d) 644 (1951); *Hartsville Cotton Mill v. South Carolina Employment Security Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 (1953).

"Involuntary unemployment" defined.

In accord with paragraph under this catchline in original. See *Hartsville Cotton Mill v. South Carolina Employment Security Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 (1953).

CHAPTER 2.

EMPLOYMENT SECURITY COMMISSION.

§ 68-63. Rules and regulations.

Rules and regulations issued under authority of this section, see Rules and Reg-

ulations, Employment Security Commission, in volume 7.

CHAPTER 3.

BENEFITS.

Sec.

68-108. Amount individuals entitled to during benefit year.

§ 68-104. Weekly benefit amount.

There must be a valid claim for benefits before a weekly benefit amount and net maximum benefit amount can be determined. And where a claimant files a claim for benefits for which he or she is not eligi-

ble under § 68-113 because not available for work, such does not constitute a valid claim. *Hartsville Cotton Mill v. South Carolina Employment Security Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 (1953).

§ 68-108. Amount individuals entitled to during benefit year.

Any otherwise eligible individual shall be entitled during any benefit year to the amount appearing in column D of the table in § 68-104 on the line on which, in column B of that table, appears his weekly benefit amount, but no otherwise eligible individual who shall have received maximum total benefits in a preceding benefit year shall be eligible to receive benefits in a succeeding benefit year unless or until such otherwise eligible individual, subsequent to the filing of the initial claim in such preceding benefit year, shall have earned wages in the employ of a liable employer equal to at least eight times the weekly benefit amount established for such individual in the preceding benefit year.

1942 Code § 7035-83; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1952 (47) 1936.
Effect of amendment.—The amendment beginning with the words "but no otherwise eligible individual."

§ 68-113. Benefits eligibility conditions.

Claimant unavailable for work due to personal circumstances. — Where a claimant's unemployment did not result from the failure of her employer to provide stable employment, but arose out of a change in her domestic circumstances which rendered her unavailable for work, on the shift on which she was most recently employed, it followed that while she was un-

available for work due to her own personal circumstances she fell outside the class which the act was intended to benefit. *Hartsville Cotton Mill v. South Carolina Employment Security Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 (1953).

Cited in *Stone Mfg. Co. v. South Carolina Employment Security Comm.*, 219 S. C. 239, 64 S. E. (2d) 644 (1951).

§ 68-114. Disqualification for benefits.

"Good cause" means cause connected with claimant's employment.—The words "good cause" as used in subsection (1) of this section contemplate, ordinarily at least, a cause attributable to or connected with claimant's employment. *Stone Mfg. Co. v. South Carolina Employment Security Comm.*, 219 S. C. 239, 64 S. E. (2d) 644 (1951).

If a wife quits her employment for the sole purpose of being with her husband, a regular member of the Armed Forces,

who has been transferred from a post in South Carolina to one in another state, she leaves her employment "voluntarily without good cause" within the contemplation of subsection (1) of this section. *Stone Mfg. Co. v. South Carolina Employment Security Comm.*, 219 S. C. 239, 64 S. E. (2d) 644 (1951).

Cited in *Hartsville Cotton Mill v. South Carolina Employment Security Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 (1953).

CHAPTER 4.

CLAIMS FOR BENEFITS.

Article 1.

Allowance of Claims.

Sec.

68-155 Appeal from initial determination.

Article 2.

Rates of Contributions.

68-175.1. Account not terminated on suspension of business for service in armed forces, etc.

Sec.

68-175.2. No reduction in rate when execution for unpaid tax outstanding.

68-185.1. No transfer unless accrued taxes paid.

ARTICLE 1.

*Allowance of Claims.***§ 68-151. Claims for benefits; regulations; duties of employer.**

Rules and regulations issued under authority of this section, see Rules and Regulations, Employment Security Commission, in volume 7.

Quoted in *Hartsville Cotton Mill v. South Carolina Employment Security Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 (1953).

§ 68-152. Initial determination of claim.

Claim upon which initial determination can be made cannot be filed until claimant

eligible for benefits.—This section says that the initial determination shall include a

determination as to when benefits shall commence, thereby evidencing the intention of the act to be that a valid claim upon which an initial determination can be made cannot be filed until the claimant is eligible for benefits. *Hartsville Cotton Mill v. South Carolina Employment Security Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 (1953).

A claimant who is found to be unavailable for work, and thus ineligible, or who

fails to meet any of the other benefit eligibility conditions of § 68-114, cannot file a valid claim for benefits, as such term is used in that the Unemployment Compensation Law, upon which there can be established a benefit year, a weekly benefit amount and a net maximum benefit amount. *Hartsville Cotton Mill v. South Carolina Employment Security Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 (1953).

§ 68-155. Appeal from initial determination.

The term "any interested party" as used in this section shall include the last employer or employing unit, whether subject to this title or not and whether benefits may be charged to its account or not, and the last covered employer or any employing unit whose account may be charged with benefits.

1952 (47) 1884.

Effect of amendment.—The amendment original section was not otherwise affected and is therefore not set out above.

§ 68-164. Judicial review of Commission decision.

Applied in *Hartsville Cotton Mill v. Comm.*, 224 S. C. 407, 79 S. E. (2d) 381 *South Carolina Employment Security* (1953).

ARTICLE 2.

Rates of Contributions.

§ 68-175.1. Account not terminated on suspension of business for service in armed forces, etc.

If the Commission finds that an employer ceased to render employment solely due to the closing of the business because of the entrance of one or more of the owners, officers, partners, or the majority stockholders into the armed forces of the United States, or any of its allies, or of the United Nations after January 1 1951, such employer's account shall not be terminated. And if the business is resumed and employment rendered within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience shall be deemed to have been continuous throughout such period. The reserve ratio of any such employer shall be the total contributions paid by such employer minus all benefits, including benefits paid to any individual during the period such employer was in the armed forces, charged against such employer's account, divided by the average of his annual payrolls for the three most recent fiscal years during the whole of which, respectively, such employer has been in business and has rendered employment. This provision shall not be construed to authorize cash refunds and any adjustments required hereunder shall be only by credit certificate.

1952 (47) 1889.

§ 68-175.2. No reduction in rate when execution for unpaid tax outstanding.

No employer shall be permitted to pay his unemployment compensation tax at a reduced rate for any quarter when a tax execution issued in accord with § 68-208 with respect to delinquent unemployment compensation tax for a previous quarter shall be unpaid and outstanding against such employer. The Commission may waive this provision in those instances in which such an employer shall comply with any agreement entered into providing for installment payments of delinquent unemployment compensation taxes placed in execution.

1952 (47) 1889.

§ 68-185.1. No transfer unless accrued taxes paid.

No transfer of experience rating accounts, in whole or in part, shall be permitted under the provisions of §§ 68-178 to 68-185 unless all unemployment compensation

taxes based on wages paid by the transferring employer prior to the date of the transfer shall be paid by the transferring employer when due or assumed by the acquiring employer.

1952 (47) 1891.

CHAPTER 5.

EMPLOYER'S COVERAGE.

Sec.
68-252. Election as to coverage.

Sec.
68-253. Termination of coverage.

§ 68-252. Election as to coverage.

(1) An employing unit not otherwise subject to this Title, which files with the Commission its written election to become an employer subject to this Title for not less than two calendar years, shall, with the written approval of such election by the Commission, become an employer subject to the same extent as all other employers as of the date stated in such approval and shall cease to be subject to this Title as of January first of any calendar year subsequent to such two calendar years if by the thirtieth day of April of such year it has filed with the Commission a written notice to that effect.

1942 Code § 7035-88, 1936 (39) 1716; 1939 (41) 487; 1952 (47) 1888.

Effect of amendment.—The amendment from January 31st to April 30th. The second paragraph of the section was not affected and therefore is not set out above.

§ 68-253. Termination of coverage.

Except as otherwise provided in § 68-252 an employing unit shall cease to be an employer subject to this Title as of the first day of January of any calendar year only if it files with the Commission by the thirtieth day of April of such year an application for termination of coverage and the Commission finds that there were no twenty different weeks within the preceding calendar year within which such employing unit had eight or more individuals in employment subject to this Title. For the purpose of this section, the two or more employing units mentioned in items (2), (3) or (4) of § 68-11 shall be treated as a single employing unit.

But any employer who shall have rendered no employment and paid no wages in the State for a continuous period of one calendar year may submit an application for termination of coverage upon the resumption of employment in the State.

1942 Code § 7035-88, 1936 (39) 1716; 1939 (41) 487; 1952 (47) 1888.

Effect of amendment.—The amendment substituted the "thirtieth day of April" for the "thirty-first day of January" in the first sentence and added the last sentence.

Title 69.

Warehouses.

Chap. 2. State Warehouse System, § 69-133.1.

CHAPTER 2.

STATE WAREHOUSE SYSTEM.

Sec.
69-133.1. Funds use to guarantee State warehouse receipts.

§ 69-133.1. Funds use to guarantee State warehouse receipts.

All net revenues derived from operation of the State Warehouse System, over and above the amounts necessary to pay insurance premiums and premiums on the bonds of warehouseman, shall be transferred annually to a special account in the

State Treasury until the sum of two hundred thousand dollars shall have accrued therein, and such sum shall be maintained at two hundred thousand dollars by annual transfers to the account from such excess warehouse revenues of whatever amount is necessary to restore the fund to the sum of two hundred thousand dollars. Such funds shall be used to guarantee State warehouse receipts in excess of any amount recovered from officials or their bonds.

1954 (48) 1566.

The provisions of this section effective as of beginning of fiscal year beginning July 1, 1954. Atty. Gen. Op., June 25, 1954.

§ 69-135. No liability of State to be created.

Cross reference.—As to liability of Commissioner of Agriculture for losses sustained in State warehouse system, see § 3-31.

Any loss sustained in a warehouse is a liability of the State. Atty. Gen. Op., June 25, 1954.

Title 70.

Waters and Watercourses.

Chap. 5. Certain Waterways, §§ 70-255 to 70-256.

6. Local Provisions, §§ 70-331 to 70-360.

7. The Busby Park Authority, § 70-400.

CHAPTER 3.

WATER POLLUTION.

§ 70-108. Rules and regulations.

Rules and regulations promulgated under authority of this section, see Rules and

Regulations, Water Pollution Control Authority, South Carolina, in Volume 7.

§ 70-109. Standards; use of streams.

Rules and regulations promulgated under authority of this section, see Rules and

Regulations, Water Pollution Control Authority, South Carolina, in Volume 7.

§ 70-112. Classification of waters.

Editor's Note.—See A. & J. R. 1954 (48) 2672 to 2675 and certain filings in secretary of State's office for certain streams classified.

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Water Pollution Control Authority, South Carolina, in Volume 7.

CHAPTER 5.

CERTAIN WATERWAYS.

Article 1.

Winyah Bay to South Ashley River and Shipyard River.

Sec.

70-256. Same; condemnation by United States.

Sec.

70-255. Condemnation of such lands.

ARTICLE 1.

Winyah Bay to South Ashley River and Shipyard River.

§ 70-255. Condemnation of such lands.

If for any reason the State Development Board shall be unable to secure any such rights of way and spoil disposal areas upon, across or through any such land, including submerged lands, property or rights, by voluntary agreement with the owner thereof, the Board, acting for and in behalf of the State may condemn the same and in so doing the ways, means, method and procedure of § 33-811 and

§§ 33-831 to 33-840, relating to obtaining rights of way for highway purposes by governing bodies of the counties shall be used by the Board as nearly as they are suitable for the purposes of this article, a majority of the members of the Board having the power to act hereunder. * * *

1942 Code § 6031-1; 1934 (38) 1314; 1935 (39) 120; 1938 (40) 1902; 1945 (44) 156; 1954 (48) 1745.

Effect of amendment.—The amendment to State Development Board. The section changed State Research, Planning and otherwise remains effective.
Development Board in the last sentence

§ 70-256. Same; condemnation by United States.

* * * In case the United States Government shall so condemn such lands, including submerged lands, property and property rights, the State Development Board may pay all expenses of such condemnation proceedings and any award that may be made thereunder out of any moneys appropriated for such purposes.

1942 Code § 6031-1; 1934 (38) 1314; 1935 (39) 120; 1938 (40) 1902; 1945 (44) 156; 1954 (48) 1745.

Effect of amendment.—The amendment to State Development Board. The section changed State Research, Planning and otherwise remains effective.
Development Board in the last sentence

CHAPTER 6.

LOCAL PROVISIONS.

Article 4.

Motor Boats on Brighton Beach.

Sec.
70-331. Unlawful to operate at certain points.

Article 6.

Motor Boats at Bailey's Beach.

Sec.
70-351. Operation of motor boats prohibited in designated area.

Article 5.

Motor Boats on Saluda Lake.

70-341. Unlawful to operate at certain points and certain times.

Article 7.

Beaufort County Water Authority.

70-360. Created; duties and powers; etc.

ARTICLE 4.

Motor Boats on Brighton Beach.

§ 70-331. Unlawful to operate at certain points.

It is unlawful for any person to operate any boat propelled at the time by an in-board or outboard motor at *Brighton Beach* on May River, *Beaufort County*, between the low and high tide water marks and between the docks of J. E. Smith on the east and the docks of C. Ray Carter on the west. It is declared that the operation of such craft in the area referred to constitutes an undue hazard to persons using the area on this beach for bathing and swimming. The supervisor of *Beaufort County* shall place at each end of this area an appropriate sign designating it as a bathing area only. The sheriff of *Beaufort County* and his deputies shall see that the provisions of this section are observed and enforced. Any violation of the provisions of this section is declared to be a misdemeanor and, upon conviction the offender shall be fined not exceeding one hundred dollars or be imprisoned for a term not exceeding thirty days.

1953 (48) 36.

ARTICLE 5.

Motor Boats on Saluda Lake.

§ 70-341. Unlawful to operate at certain points and certain times.

It shall be unlawful for any person to operate an outboard motor boat on the waters of Saluda Lake between Farr's Bridge and the Duke Power Company power dam unless a muffler and a muffler plate is securely in place thereon, except that on Monday, Wednesday and Friday of each week throughout the year from 12:01 p. m. to 8:00 p. m. any person may operate an outboard motor boat without muffler

or muffler plate within the limits of the big lake, being that portion of Saluda Lake which lies west of the Greenville Motor Boat Club concrete landing ramp. On any day when an officially sanctioned scheduled motor boat race is held, outboard motor boats without muffler or muffler plates may be operated at any point on Saluda Lake without regard to time. On the days and times set out above for operation of outboard motor boats without muffler and muffler plates it shall be unlawful for any person to operate any inboard motor boat within the big lake area of Saluda Lake as herein described. Nothing herein shall be construed to prevent the operation of outboard motor boats on any portion of Saluda Lake when such boats are equipped with muffler and muffler plates in place, without regard to the times hereinbefore set out. Any person violating this section shall upon conviction be fined not more than fifty dollars or imprisoned for not more than twenty days or both.

1953 (48) 473.

ARTICLE 6.

Motor Boats at Bailey's Beach.

§ 70-351. Operation of motor boats prohibited in designated area.

It is unlawful for any person to operate a boat propelled at the time by an inboard or outboard motor between the low and high tide water marks and within two hundred feet east or west of a dock owned by George Bailey at Bailey's Beach on the north side of the Colleton River in *Beaufort* County. It is declared that the operation of such craft in the area referred to constitutes an undue hazard to persons using the area on such beach for bathing and swimming. Any violation of the provisions of this section is declared to be a misdemeanor and, upon conviction, the offender shall be fined not exceeding one hundred dollars or be imprisoned for a term not exceeding thirty days.

1954 (48) 1940.

ARTICLE 7.

Beaufort County Water Authority.

§ 70-360. Created; duties and powers, etc.

Provisions of A. & J. R. 1954 (48) 1947 make up this section.

CHAPTER 7.

THE BUSBY PARK AUTHORITY.

Sec.

70-400. Created, etc.

§ 70-400. Created, etc.

Provisions of A. & J. R. 1953 (48) 464 and A. & J. R. 1954 (48) 1821 make up this section.

Title 71.**Welfare.**

Chap. 1. Grants of Monetary Assistance, §§ 71-14.1 to 71-115.1.

CHAPTER 1.

GRANTS OF MONETARY ASSISTANCE.

Article 1.

State Department and Board of Public Welfare; Advisory Councils.

Sec.

71-14.1. Names of recipients of payments public records; unlawful publication thereof.

Article 5.

Aid to Dependent Children.

71-91. Definitions.

71-95. Grant of aid; appeal if aid denied.

Sec.

71-96. Amounts of grants to dependent children and needy relative with whom child living.

Article 6.

Aid to Blind.

71-114. County department to determine amount of such assistance.

71-115. Examination required; re-examination.

71-115.1. Effect of refusal of operation or treatment.

ARTICLE 1.

State Department and Board of Public Welfare; Advisory Councils.

§ 71-10. State Department may investigate certain agencies.

Cited in *Cutshaw v. Harvey*, 223 S. C. 276, 75 S. E. (2d) 602 (1953).

§ 71-11. Cooperation with Federal Government, etc.

Cited in *Cutshaw v. Harvey*, 223 S. C. 276, 75 S. E. (2d) 602 (1953).

§ 71-14.1. Names of recipients of payments public records; unlawful publication thereof.

The names of the recipients receiving public assistance payments from the State or county departments of public welfare, together with amounts of such assistance payments, are hereby declared to be public records and open to public inspection. It shall be unlawful for any person to compile, publish or otherwise use a list of such names for commercial or political purposes of any nature. Any person violating any provision of this section shall, upon conviction, be fined not more than five hundred dollars or imprisoned for not more than six months, or both, in the discretion of the court.

1953 (48) 504.

ARTICLE 2.

County Departments and Boards of Public Welfare.

§ 71-36. Duties and powers of county boards.

Care of neglected children.—While a county department of public welfare does not have jurisdiction of proceedings relating to the custody of minor children, this agency may be used by the court to take

charge of neglected children temporarily until a suitable place can be found for them. *Cutshaw v. Harvey*, 223 S. C. 276, 75 S. E. (2d) 602 (1953).

ARTICLE 5.

Aid to Dependent Children.

§ 71-91. Definitions.

(2) The term "*aid to dependent children or needy relative*" means money payments with respect to a dependent child, dependent children or a needy relative with whom any dependent child is living.

1942 Code § 4996-34; 1937 (40) 496; 1947 (45) 489; 1954 (48) 1684.

Effect of amendment.—All after second "children" added, 1954 p. 1684.

Cited in *Cutshaw v. Harvey*, 223 S. C. 276, 75 S. E. (2d) 602 (1953).

§ 71-95. Grant of aid; appeal if aid denied.

If such child is found to be in need and (a) to have resided in the State for one year immediately preceding the application for such aid or (b) to have been born within one year immediately preceding the application if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding such birth, the county department shall grant such aid as may be necessary for the support of such child in its own home or in the home of one of its relatives, as set forth in this chapter, in a manner compatible with decency and health. In case application for aid for a dependent child is rejected by the county department, appeal may be made to the State Department as elsewhere provided in this chapter.

1942 Code § 4996-36; 1937 (40) 496; 1952 (47) 1974.

Effect of amendment.—Formerly the of a mother who had resided within the child, if less than one year old, was re- State for one year prior to the birth of quired to have been born within the State the child.

§ 71-96. Amounts of grants to dependent children and needy relative with whom dependent child living.

In granting aid for dependent children the amount granted shall not exceed thirty dollars per month for one child in any home, nor twenty-one dollars per month for each additional child in the same home, and shall not exceed thirty dollars per month for a needy relative with whom any dependent child is living.

1942 Code § 4996-38; 1937 (40) 496; 1947 (45) 489; 1954 (48) 1684.

Effect of amendment.—The amendment for each additional child to twenty-one dollars increased maximum grant for one child to increased maximum grant for one child to thirty dollars from twenty-four dollars and after second "home".

ARTICLE 6.*Aid to Blind.***§ 71-114. County department to determine amount of such assistance.**

Within available appropriations and subject to the rules and regulations of the State Department, the amount of assistance which any person shall receive shall be determined by the county department after making such investigation as is necessary or required by the State Department. The investigation shall be made with due regard to the resources, necessary expenditures and other pertinent conditions existing in the case of each applicant. In making the investigation the first fifty dollars a month of earned income shall not be considered. The amount of assistance given shall be sufficient, when added to other income and means of support of the recipient, to provide such person with a reasonable subsistence compatible with decency and health.

1942 Code § 4996-41; 1937 (40) 496; 1947 (45) 489; 1952 (47) 1974.

Effect of amendment. — Formerly the "pertinent" has been added before the term "available appropriations" was "available word "conditions." And the next to the able annual appropriations." The word last sentence is new.

§ 71-115. Examination required; re-examination.

No application for assistance shall be approved until the applicant has been examined. The State Department shall designate the procedure to be followed and shall establish a register of optometrists and physicians, skilled in the diseases of the eye, from which the applicant may select one to conduct a competent medical examination for determining his blindness. The State Department shall pay for such examination.

Any recipient of assistance shall submit to re-examination as to his eyesight when required to do so and shall furnish any information required by the State Department.

1942 Code § 4996-42; 1937 (40) 496; 1952 (47) 1974.

Effect of amendment.—The second and third sentences are new.

§ 71-115.1. Effect of refusal of operation or treatment.

If, upon examination or re-examination, it shall be found that a recipient or claimant for relief may have such disability benefited or removed by proper surgical operation or medical treatment but such person refuses to permit such operation or treatment, the State Board may refuse, discontinue or reduce the assistance requested or being received.

1942 Code § 4996-43; 1937 (40) 496; 1954 (48) 1505.

Effect of amendment.—The amendment changed "Advisory Council" to "State Board".

Title 72.**Workmen's Compensation.**

- Chap. 1. General Provisions, § 72-11.1.
 2. Industrial Commission, § 72-51.
 4. Compensation and Payment Thereof, §§ 72-151 to 72-180.
 8. Insurance and Self-Insurance, § 72-419.
 9. State Workmen's Compensation Fund, § 72-456.1.

CHAPTER 1.**GENERAL PROVISIONS.**

Sec.

72-11.1. Same; exception for Greenville County.

§ 72-1. Short title.

While the Supreme Court should give the Compensation Act a liberal construction, etc.

In accord with 1st paragraph under this catchline in Code. See *Teigue v. Appleton Co.*, 221 S. C. 52, 68 S. E. (2d) 878 (1952).

The Workmen's Compensation Act was adopted for the benefit of employees and their dependents, and it should be liberally construed in order to accomplish this humane purpose. But liberal construction does not mean that the act should be converted into a form of insurance. *Price v. B. F. Shaw Co.*, 204 S. C. 89, 77 S. E. (2d) 491 (1953).

A claimant who asserts the right to compensation carries the burden of establishing the necessary facts to entitle him to

such compensation. *Broughton v. South Carolina Game, etc.*, Dept., 219 S. C. 50, 64 S. E. (2d) 152 (1951).

Cited in *Horton v. Baruch*, 217 S. C. 48, 59 S. E. (2d) 545 (1950); *Hewitt v. Cheraw Cotton Mills*, 217 S. C. 90, 59 S. E. (2d) 712 (1950); *Black v. Springfield*, 217 S. C. 413, 60 S. E. (2d) 854 (1950); *Cribbs v. Southern Coatings, etc., Co.*, 218 S. C. 273, 62 S. E. (2d) 505 (1950); *McCoy v. Easley Cotton Mills*, 218 S. C. 350, 62 S. E. (2d) 772 (1950); *Jolly v. South Carolina Industrial School for Boys*, 219 S. C. 155, 64 S. E. (2d) 252 (1951); *Shealey v. American Health Ins. Corp.*, 220 S. C. 79, 66 S. E. (2d) 461, 27 A. L. R. (2d) 942 (1951); *Hiers v. Brunson Const. Co.*, 221 S. C. 212, 70 S. E. (2d) 211 (1952).

§ 72-4. Average weekly wages.

Average weekly wages properly computed on compensation from two independent employers, under exceptional circumstances.—Because of exceptional reasons being present where injured employee worked for two different independent employers, the work being wholly dissimilar, his average weekly wages properly com-

puted on basis of total compensation from both employments under questions raised in this proceeding, but this decision not to be considered as a precedent for purpose of computation under this section. *McCummings v. Anderson Theatre Co.*, ... S. C., 81 S. E. (2d) 348 (1954).

§ 72-6. Child, grandchild, brother and sister.

Section applies to children established as illegitimate.—It was undoubtedly the purpose of our Workmen's Compensation Law to abrogate the common-law rule with ref-

erence to illegitimacy, but this section applies to children who are established as being illegitimate and acknowledged by the putative father. *Barr's Next of Kin v. Cher-*

okee, Inc., 220 S. C. 447, 68 S. E. (2d) 440 (1951).

It was not intended to abrogate the rule that neither husband nor wife may testify as to non-access between them in any case where the question of the legitimacy of a child born in wedlock is in issue. The evi-

dence of non-access must come from third persons. *Barr's Next of Kin v. Cherokee, Inc.*, 220 S. C. 447, 67 S. E. (2d) 440 (1951), holding that the evidence was insufficient to show that claimant was the illegitimate child of the deceased employee.

§ 72-10. Disability.

Compensation awarded for disability, not physical injury.—With certain exceptions not pertinent here, compensation is not awarded for physical injury as such but for "disability" produced by such injury, and disability is to be measured by employee's capacity or incapacity to earn the wages which he was receiving at time of injury, loss of earning capacity being the criterion. There is no recognition of ele-

ments of pain and suffering, or of increased discomfort and difficulty in performing the work, as long as there is no diminution in earning capacity. *Keeter v. Clifton Mfg. Co.*, _____ S. C. _____, 82 S. E. (2d) 520 (1954).

Applied in *McCummings v. Anderson Theatre Co.*, _____ S. C. _____, 81 S. E. (2d) 348 (1954).

§ 72-11. Employee.

The basic purpose of this title, etc.

The basic purpose of the Workmen's Compensation Act is inclusion of employers and employees and not their exclusion, and doubts of jurisdiction must be resolved in favor of inclusion rather than exclusion. *Horton v. Baruch*, 217 S. C. 48, 59 S. E. (2d) 545 (1950).

A casual employee is excluded although the work being done is in the course of his employer's business or occupation. *Benbow*

v. Edmunds High School, 220 S. C. 363, 67 S. E. (2d) 680 (1951).

A regular employee of an electrical contractor, sent by his foreman to a high school to repair a fluorescent light, would, if he had been employed directly by the high school, have been a casual employee and excluded from the operation of this Title by §§ 72-11 and 72-107. *Benbow v. Edmunds High School*, 220 S. C. 363, 67 S. E. (2d) 680 (1951).

§ 72-11.1. Same; exception for Greenville County.

Notwithstanding the provisions of § 72-11 or § 72-456, the members of the *Greenville* County board of commissioners and the members of all the other boards and commissions of said county, including the members of the board of assessors, shall not be deemed employees of *Greenville* County within the meaning of the Workmen's Compensation Law and are hereby exempted from the provisions of the Workmen's Compensation Law. And *Greenville* County shall not be liable for injuries sustained by any such board member in the course of his employment.

1952 (47) 2163.

§ 72-13. Employment.

"Quasi-public corporations" fall within that group designated in this section as "the State and all political subdivisions thereof," which are subject to the terms of the Workmen's Compensation Act regardless of the number of their employees. *Black v. Springfield*, 217 S. C. 413, 60 S. E. (2d) 854 (1950).

Municipal corporations included regard-

less of number of employees.—Construing this section in conjunction with § 72-102, it appears that municipal corporations and their employees are subject to and bound by the terms of the Workmen's Compensation Act regardless of the number of employees employed by the municipality. *Black v. Springfield*, 217 S. C. 413, 60 S. E. (2d) 854 (1950).

§ 72-14. Injury and personal injury.

I. GENERAL CONSIDERATION.

Negligence and contributory negligence are of no consequence in workmen's compensation cases. *Jordan v. Dixie Chevrolet*, 218 S. C. 73, 61 S. E. (2d) 654 (1950).

The burden is upon the claimant to prove the facts which render the injury compensable. *Mims v. Nehi Bottling Co.*, 218 S. C. 513, 63 S. E. (2d) 305 (1951).

Natural consequences from injury also compensable.—Where injury to deceased

employee was an accident arising out of and in the course of his employment and was a compensable injury, every natural consequence which flowed from this injury, unless result of independent intervening cause sufficient to break chain of causation, is likewise compensable. *Whitfield v. Daniel Construction Co.*, _____ S. C. _____, 83 S. E. (2d) 460 (1954).

II. ACCIDENTS.

The adjective "accidental" qualifies and

describes the injuries contemplated by this section as having the quality or condition of happening or coming by chance or without design, taking place unexpectedly or unintentionally. *Hiers v. Brunson Const. Co.*, 221 S. C. 212, 70 S. E. (2d) 211 (1952).

Overexertion or strain aggravating heart condition.—A heart injury, when brought on by overexertion or strain in the course of work, is compensable, though a pre-existing pathology may have been a contributing factor. But in order to obtain an award for any accidental injury resulting from aggravation of heart trouble, there must be a sudden, unusual exertion, violence or strain. *Raley v. Camden*, 222 S. C. 303, 72 S. E. (2d) 572 (1952); *Price v. B. F. Shaw Co.*, 224 S. C. 89, 77 S. E. (2d) 491 (1953).

Where an employee dies in the regular performance of his duties from a heart attack, although not at the time nor prior thereto doing any work requiring unusual exertion, the death is not compensable. *Price v. B. F. Shaw Co.*, 224 S. C. 89, 77 S. E. (2d) 491 (1953).

Evidence as to causal connection between fireman's exertion at fire and his death from coronary occlusion more than two months later was subject to more than one reasonable inference, and Industrial Commission's finding of fact that death did not result from accident was not subject to review by courts. *Windham v. Florence*, 221 S. C. 350, 70 S. E. (2d) 553 (1952).

ILLUSTRATIONS.

Where, after finishing lunch in cafeteria operated by employer, claimant twisted and injured knee as she arose from the table, such injury was not caused by accident within meaning of this section, claimant's injury being simply some internal failure or breakdown in knee which might have happened at any time, and may be characterized as a lamentable result of an ordinary employment of the body unattended by any accidental circumstances. *Miller v. Springs Cotton Mills*, _____ S. C. _____, 82 S. E. (2d) 458 (1954).

Where deceased employee received superficial laceration of scalp, admittedly compensable, and employer's physician sewed up wound and upon dismissal gave decedent prescription for nembutal capsules, and decedent subsequently took one or more of them, and later while driving home crashed into bridge sustaining injuries which resulted in his death, Commission warranted in finding that decedent came to his death as result of taking drugs prescribed by employer's physician, necessitated by original injury, which impaired his mental and physical faculties, thereby causing fatal collision, and in making award for death. *Whitfield v. Daniel*

Construction Co., _____ S. C. _____, 83 S. E. (2d) 460 (1954).

III. DISEASE.

In general.—If one becomes ill while at work from natural causes, the state or condition is not accidental since it is a natural result or consequence and might be termed normal and to be expected. If, however, there is a subsisting condition of illness or incapacity or physical disability which is caused, increased, or accelerated by some act or event coming by chance or happening fortuitously, then the requisite quality or condition of the injury will exist so as to make it accidental. Neither is it necessary that the accidental quality or condition be created by a wound or external violence. *Hiers v. Brunson Const. Co.*, 221 S. C. 212, 70 S. E. (2d) 211 (1952).

Pneumonia caused or accelerated by exposure.—Evidence held to support finding that employee's death resulted from pneumonia which was caused or accelerated by his having repaired a roof, in the course of his employment, on a raw, cold day when he was suffering from a cold, and that death was therefore the result of an accident arising out of the employment. *Hiers v. Brunson Const. Co.*, 221 S. C. 212, 70 S. E. (2d) 211 (1952).

IV. ARISING OUT OF AND IN COURSE OF EMPLOYMENT.

A. Generally. —

They are not synonymous, etc.

In accord with 1st paragraph under this catchline in Code. See *Willard v. Com'rs of Public Works*, 219 S. C. 477, 65 S. E. (2d) 874 (1951).

When the section speaks of arising out of the employment, etc.

In accord with paragraph under this catchline in Code. See *Willard v. Com'rs of Public Works*, 219 S. C. 477, 65 S. E. (2d) 874 (1951).

While the words "in the course of employment," etc.

In accord with 1st paragraph under this catchline in Code. See *Willard v. Com'rs of Public Works*, 219 S. C. 477, 65 S. E. (2d) 874 (1951).

Ordinarily an employee while on vacation is not within the protection of the act. *Williams v. Columbia*, 218 S. C. 287, 62 S. E. (2d) 469 (1950).

But employee need not be actually performing work at time of injury.—An employee, in order to be entitled to compensation, need not necessarily be engaged in the actual performance of work at the time of injury; it is enough if he is upon his employer's premises, occupying himself consistently with his contract of hire in some manner pertaining to or incidental to his employment. *McCoy v. Easley Cotton Mills*, 218 S. C. 350, 62 S. E. (2d) 772 (1950).

Or doing what was specially prescribed to him.—An accident cannot be said not to "arise out of" the employment merely because the injured employee at the time was not engaged in doing what was specially prescribed to him; if in the course of his employment an emergency arises and, without deserting his employment, he does what he thinks necessary for the purpose of advancing the work in which he is engaged in the interest of his employer, and in so doing he suffers injury, the accident may properly be regarded as arising out of the employment. *Hiers v. Brunson Const. Co.*, 221 S. C. 212, 70 S. E. (2d) 211 (1952).

Risk or danger need not be inherent in or essential to employment.—Any injury may be regarded as arising out of the employment if it resulted from a risk or danger to which the workman was exposed by reason of being engaged in the performance of his duties although such risk or danger was not inherent in and not necessarily essential to the activities of the employment. *Jordan v. Dixie Chevrolet*, 218 S. C. 73, 61 S. E. (2d) 654 (1950).

Injury or death caused or hastened by atmospheric conditions.—The test as to whether the injury or death arose out of or in the course of employment when caused or hastened by atmospheric conditions, is whether, under all the circumstances, the employee was exposed to a greater risk by reason of his employment and duties than was imposed upon an ordinary member of the public. *Hiers v. Brunson Const. Co.*, 221 S. C. 212, 70 S. E. (2d) 211 (1952).

Where the work and the method of doing the work expose the employee to the forces of nature to a greater extent than he would be if not so engaged, the industry increases the danger from such forces, and the employer is liable. *Hiers v. Brunson Const. Co.*, 221 S. C. 212, 70 S. E. (2d) 211 (1952).

Police employee acting as messenger for prisoner.—Where employee of city police department was accidentally injured while carrying message for prisoner to wife in distant section of city to arrange bail, and such errand was authorized under general orders of police department, it was within police power of municipality, acting through its police department, to authorize and direct employee to perform duties in which he was engaged at time of his injury, and such injury was compensable as arising out of and in course of employment. *Lomax v. City of Greenville*, . . S. C. . . , 82 S. E. (2d) 191 (1954).

B. Going to and from Work.

But an injury incurred by a workman in the course of his travel, etc.

The general rule is that one who is injured on a public highway while going to or returning from his work cannot claim

that his injuries arose out of and in the course of employment. *McDonald v. E. I. DuPont De Nemours & Co.*, 223 S. C. 217, 74 S. E. (2d) 818 (1953).

Unless the incidents of employment be exceptional, etc.

In accord with paragraph under this catchline in Code. See *McDonald v. E. I. DuPont De Nemours & Co.*, 223 S. C. 217, 74 S. E. (2d) 818 (1953).

To this rule there are certain exceptions, as follows: 1. Where in going to and returning from work, the means of transportation is provided by the employer, or the time thus consumed is paid for or included in the wages. 2. Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment. 3. Where the way used is the sole and exclusive way of ingress and egress, or where the way of ingress and egress is constructed and maintained by the employer, and there is some inherent danger in the use of such exclusive street or way. *McDonald v. E. I. DuPont De Nemours & Co.*, 223 S. C. 217, 74 S. E. (2d) 818 (1953).

Injury received by claimant not compensable when on way to work he slipped on icy pavement of city street and broke his hip, even though at time he had papers in his pocket on which he had been working for employer at home, such work at home being for his own convenience. *Sylvan v. Sylvan Bros.*, . . . S. C. . . , 82 S. E. (2d) 794 (1954).

C. Illustrations.

1. Covered by Statute.

Injury incurred while smoking on employer's premises outside building where claimant was employed held compensable. *McCoy v. Easley Cotton Mills*, 218 S. C. 350, 62 S. E. (2d) 772 (1950).

Painting living quarters furnished to employee by employer.—Where a hog foreman and general utility man employed by the South Carolina Industrial School for Boys was injured while engaged in painting the entrance hall and apartment occupied by him and his family, said apartment being furnished rent-free by his employer, the injury arose out of and in the course of his employment. *Jolly v. South Carolina Industrial School for Boys*, 219 S. C. 155, 64 S. E. (2d) 252 (1951).

Tampering with strange object in idle curiosity.—Where one, while awaiting a work assignment during working hours at his place of employment, in idle curiosity tampers with a strange object which is presented by reason of the nature of the employer's business, and is injured, the injury may be compensable. *Jordan v. Dixie Chevrolet*, 218 S. C. 73, 61 S. E. (2d) 654 (1950), holding compensable an injury to a garage employee who, during an idle period, found a tear gas bomb in the glove com-

partment of a car being repaired by another employee, and, not knowing what the object was, pulled the cotter pin and threw the bomb to the floor, causing it to explode.

Police employee acting as messenger for prisoner.—Where employee of city police department was accidentally injured while carrying message for prisoner to wife in distant section of city to arrange bail, and such errand was authorized under general orders of police department, it was within police power of municipality, acting through its police department, to authorize and direct employee to perform duties in which he was engaged at time of his injury, and such injury was compensable as arising out of and in course of employment. *Lomax v. City of Greenville*, — S. C. —, 82 S. E. (2d) 191 (1954).

2. Not Covered by Statute.

Evidence insufficient, etc.

Where an employee had closed his employer's place of business for the day and was going home with the intention of posting his employer's mail en route, and on his way entered the premises of a laundry where close friends of his were employed, and was killed in an explosion occurring on those premises, the accident which resulted in his death did not arise out of and in the course of his employment. *Mims v. Nehi Bottling Co.*, 218 S. C. 513, 63 S. E. (2d) 305 (1951).

Where an employee was killed while walking along a public street approximately 300 feet from the entrance to the plant of his employer, during his lunch hour, while on his own time, and while performing no duty for his employer, his death was not the result of an accident arising out of and in the course of his employment. *Troutman v. Williams Furniture Corp.*, 224 S. C. 353, 79 (2d) S. E. 374 (1953).

Where claimants' decedent was not required or expected at premises of employer before about seven o'clock in the morning when his hourly wage would begin, and he went there at some time before five o'clock and was burned to death in his parked automobile on employer's premises hours before his scheduled work period would begin, it could not be reasonably said that there was any causal relation between the employment and the death, nor that decedent's activities which resulted in his death were incidental to the employment.

Crawley v. T. G. Griggs Trucking Co., 225 S. C. 154, 81 S. E. (2d) 41 (1954).

Evidence that claimant on way to work slipped and fell on icy pavement of city street and broke his hip, and had papers of employer in his pocket on which he had worked at home night before, did not convert him into an employee in course of his employment as main purpose of journey was to return to place of employment and would be made irrespective of the home-work and was not an errand for employer, the homework being for his own convenience; nor did accident arise out of employment as ice on street was common danger and had no relation to claimant's employment, and manifestly there was no causal connection between employment and injury. *Sylvan v. Sylvan Bros.*, — S. C. —, 82 S. E. (2d) 794 (1954).

Injury during vacation.—Where a laborer and handy man at a municipal water plant during his vacation returned to the plant in order to obtain permission of his employer to leave the city, and joined other employees in gathering nuts on the premises, as they were permitted to do, and fell from a tree, sustaining injuries, the injury did not arise out of and in the course of his employment. *Williams v. Columbia*, 218 S. C. 287, 62 S. E. (2d) 469 (1950).

Police chief riding fire truck in violation of instructions.—Where town chief of police, while riding, contrary to explicit instructions of the mayor and the town council, on the side of a fire truck owned by the town, on its way to extinguish a fire, fell and received injuries from which he died, the accident did not arise out of and in the course of his employment. *Black v. Springfield*, 217 S. C. 413, 60 S. E. (2d) 854 (1950).

Death of city employee who suffered a heart attack while attending a demonstration of a process for cleaning water pipes was not the result of an accident arising out of and in the course of his employment. *Willard v. Com'rs of Public Works*, 219 S. C. 477, 65 S. E. (2d) 874 (1951).

Drowning of game warden.—Evidence held insufficient to support finding that claimant's decedent, a game warden, was drowned while in the discharge of his duty and that his death arose out of and in the course of his employment. *Broughton v. South Carolina Game, etc., Dept.*, 219 S. C. 50, 64 S. E. (2d) 152 (1951).

CHAPTER 2.

INDUSTRIAL COMMISSION.

Sec.

72-51. Created; appointment, terms and chairman.

§ 72-51. Created; appointment, terms and chairman.

There is hereby created a Commission, to be known as the South Carolina Industrial Commission, consisting of five commissioners who shall devote their entire time

to the duties of the Commission. The Governor, by and with the advice and consent of the Senate, shall appoint the members of the Commission for terms of six years, the commissioners first appointed, however, having been appointed two for a term of two years, two for a term of four years and one for a term of six years. The Governor shall designate one of the members so selected as chairman.

1942 Code § 7035-54; 1936 (39) 1231; 1952 (47) 1925.

Effect of amendment.—Formerly the section contained provisions to the effect that not more than two appointees could be persons who by reason of previous vocations, etc., could be classed as representatives of

employers or employees, respectively, and that the chairman must be a person who could not be classed as a representative of either employers or employees.

§ 72-59. Rules of Commission.

Rules and regulations promulgated under authority of the section, see Rules and Regulations, Industrial Commission, in Volume 7.

Cited in *Herring v. Lawrence Warehouse Co.*, 222 S. C. 226, 72 S. E. (2d) 453 (1952).

Stated in *Gurley v. Mills Mill*, 225 S. C. 46, 80 S. E. (2d) 745 (1954).

§ 72-60. Process and procedure.

Granting or refusal of continuance within Commission's discretion.—Industrial Commission is quasi judicial board and as such is vested with a wide discretion in procedural matters, and granting or refusal of

continuance rests in the sound discretion of Commission and such discretion when exercised will not be interfered with unless abuse thereof is shown. *Gurley v. Mills Mill*, 225 S. C. 46, 80 S. E. (2d) 745 (1954).

CHAPTER 3.

APPLICATION AND EFFECT OF TITLE.

§ 72-102. Public divisions and their employees cannot exempt themselves.

Considering this section and § 72-13 in conjunction, the one with the other, it is apparent that legislature intended to set up two classes of employers: (1) the State and all political subdivisions thereof, including quasi-public corporations; (2) all private employment in which fifteen or more regular employees are employed. In

the latter class employers and employees are given the express right to elect whether or not they shall come under the provisions of the Workmen's Compensation Act, but no such right is given those falling within the first group. *Black v. Springfield*, 217 S. C. 413, 60 S. E. (2d) 854 (1950).

§ 72-107. Casual employees and other excepted employments.

Cross reference.—As to casual employees, see note to § 72-11.

The exclusion of casual employees applies to all sections of this title. *Benbow v. Edmunds High School*, 220 S. C. 363, 67 S. E. (2d) 680 (1951).

An employer who had only two employees in South Carolina was presumptively excluded from the provisions of the Workmen's Compensation Act. *Herring v. Lawrence Warehouse Co.*, 222 S. C. 226, 72 S. E. (2d) 453 (1952).

§ 72-111. Liability of owner to workmen of subcontractor.

This section does not enlarge the owner's liability for compensation beyond that which would have existed had the workman been directly employed by him. *Benbow v. Edmunds High School*, 220 S. C. 363, 67 S. E. (2d) 680 (1951).

An owner may not be held liable under this section for compensation benefits to

an employee of a contractor engaged to do minor repairs of a casual nature when he would not be liable, under §§ 72-11 and 72-107, excluding casual employees from the operation of this title, if the injured employee had been hired directly by him. *Benbow v. Edmunds High School*, 220 S. C. 363, 67 S. E. (2d) 680 (1951).

§ 72-118. Defenses not available to employer electing not to come under Title.

"Simple tool" doctrine.—It may be doubted whether the "simple tool" doctrine that an employer is not ordinarily liable for defects in tools of simple construction, which has been described as merely an application of the doctrine of the assumption of the risk, may be invoked in South Caro-

lina by an employer who, having rejected the Workmen's Compensation Act, is denied the right to defend any suit instituted by an employee on the ground that the employee had assumed the risk of injury. *Great Atlantic & Pacific Tea Co. v. Grooms*, 207 F. (2d) 718 (1953).

§ 72-121. Employee's rights under Title exclude all others and against employer.

An employee was not bound to proceed under the Workmen's Compensation Act where the Act did not ordinarily apply to his employer, since the employer had less than fifteen employees in South Carolina, and the employee had no notice that his

employer had elected to come under the Act. *Herring v. Lawrence Warehouse Co.*, 222 S. C. 226, 72 S. E. (2d) 453 (1952).

Cited in *Nolan v. Daley*, 222 S. C. 407, 73 S. E. (2d) 449 (1952); *Burns v. Carolina Power, etc., Co.*, 193 F. (2d) 525 (1951).

§ 72-126. When injured employee, etc., may bring suit against third party.

Cited in *Burns v. Carolina Power, etc., Co.*, 193 F. (2d) 525 (1951).

§ 72-131. Limitation of liability of employer.

Written statement of employee of partial disability at time of employment, admissible.—Where claimant at the time of his employment signed a statement that he was suffering from a forty per cent disability in his arm, such statement when attacked by claimant is evidence to be taken into consideration in conjunction with all the other evidence in the case and claimant

under such circumstances is not bound thereby as a matter of law but the force and effect of such is to be determined by the fact-finding body unless such is prohibited by this section, which the Court was not called upon to determine in this case. *Mason v. Woodside Mills*, 225 S. C. 15, 80 S. E. (2d) 344 (1954).

CHAPTER 4.

COMPENSATION AND PAYMENT THEREOF.

Sec.

72-151. Compensation for total disability.

72-152. Compensation for partial disability.

72-171. Commencement of compensation.

Sec.

72-180. Compensation to dependents of employee killed.

§ 72-151. Compensation for total disability.

When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during such total disability a weekly compensation equal to sixty per cent of his average weekly wages, but not more than thirty-five dollars, nor less than five dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks.

The loss of both hands, arms, feet, legs or vision in both eyes, or any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of this section.

1942 Code §§ 7035-32, 7035-34; 1936 (39) 1231; 1937 (40) 613; 1941 (42) 221; 1953 (48) 103.

Effect of amendment.—The amendment increased the maximum weekly compensation from \$25.00 to \$35.00.

Cited in *Hopper v. Firestone Stores*, 222

S. C. 143, 72 S. E. (2d) 71 (1952); *Keeter v. Clifton Mfg. Co.*, — S. C. —, 82 S. E. (2d) 520 (1954).

§ 72-152. Compensation for partial disability.

Except as otherwise provided in § 72-153, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during such disability a weekly compensation equal to sixty per cent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than thirty-five dollars a week. In no case shall the period covered by such compensation be greater than three hundred weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period allowed in this section for partial disability.

1942 Code § 7035-33; 1936 (39) 1231; 1937 (40) 613; 1953 (48) 103.

Effect of amendment.—The amendment increased the maximum weekly compensation from \$25.00 to \$35.00.

Since there was no diminution in claimant's earning capacity, he was not entitled to partial disability, and Commission was without authority to project award into future by holding, in effect, that if here-

after claimant's wages fell below those earned previous to his injury, he would be entitled to partial disability based on such difference. If change in condition should develop, only remedy afforded claimant is application of review of award under § 72-359. *Keeter v. Clifton Mfg. Co.*, --- S. C. ---, 82 S. E. (2d) 520 (1954).

§ 72-153. When disability deemed to continue for certain periods; disfigurement; compensation.

II. DISFIGUREMENT.

B. Compensation.

Illustrations.

Sum of \$1,500.00 awarded for disfigurement resulting from loss of one eye held not excessive. *McCoy v. Easley Cotton Mills*, 218 S. C. 350, 62 S. E. (2d) 772 (1950).

III. SERIOUS DISFIGUREMENT

Discretion of Commission.—The making

of an award to a claimant for serious bodily disfigurement being discretionary with the Commission, and the Commission having found as a fact that the claimant has no serious bodily disfigurement, there is no power resting in either the circuit or the Supreme Court to compel the Commission to make such award. *Hopper v. Firestone Stores*, 222 S. C. 143, 72 S. E. (2d) 71 (1952).

§ 72-161. Persons conclusively presumed wholly dependent.

Cited in *Barr's Next of Kin v. Cherokee, Inc.*, 220 S. C. 447, 68 S. E. (2d) 440 (1951).

§ 72-166. Employees previously permanently disabled.

Compensation must be based only upon the extent to which the loss or loss of use existing after the last injury exceeds that which existed prior thereto. *Hopper v. Firestone Stores*, 222 S. C. 143, 72 S. E. (2d) 71 (1952).

A claimant, who has a pre-existing total loss of a right leg and sustains a subsequent injury which occasions additional amputation thereto is not entitled to be compensated as if he were previously unimpaired. *Hopper v. Firestone Stores*, 222 S. C. 143, 72 S. E. (2d) 71 (1952).

Written statement of employee as to pre-existing disability not conclusive.—Where

claimant at the time of his employment signed a statement that he was suffering from a forty per cent disability in his arm, such statement when attacked by claimant is evidence to be taken into consideration in conjunction with all the other evidence in the case and claimant under such circumstances is not bound thereby as a matter of law but the force and effect of such is to be determined by the fact-finding body unless such is prohibited by § 72-131 which the Court was not called upon to determine in this case. *Mason v. Woodside Mills*, 225 S. C. 15, 80 S. E. (2d) 344 (1954).

§ 72-169. Foreign injuries.

There are four prerequisites, etc.

In accord with paragraph under this catchline in Code. See *Horton v. Baruch*, 217 S. C. 48, 59 S. E. (2d) 545 (1950).

Employee held a resident of South Carolina for the purpose of this section. *Horton v. Baruch*, 217 S. C. 48, 59 S. E. (2d) 545 (1950).

§ 72-171. Commencement of compensation.

No compensation shall be allowed for the first seven calendar days of disability resulting from an injury, except the benefits provided for in § 72-305; but if the injury results in disability of more than twenty-eight days compensation shall be allowed from the date of the disability.

1942 Code § 7035-31; 1936 (39) 1231; 1937 (40) 613; 1953 (48) 103.

Effect of amendment.—Formerly the seven day and twenty-eight day periods were three and fourteen days, respectively.

§ 72-180. Compensation to dependents of employee killed.

If death results proximately from an accident and within two years thereafter or while total disability still continues and within six years after the accident, the employer shall pay or cause to be paid, subject, however, to the provisions of the other sections of this Title, in one of the methods provided in this chapter, to the dependents of the employee wholly dependent upon his earnings for support

at the time of the accident, a weekly payment equal to sixty per cent of his average weekly wages, but not more than thirty-five dollars nor less than five dollars a week, for a period of three hundred and fifty weeks from the date of the injury, and burial expenses not exceeding two hundred dollars. If the employee leaves dependents only partly dependent upon his earnings for support at time of the injury, the weekly compensation to be paid shall equal the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employee before his death the compensation to dependents shall begin from the date of the last of such payments but shall not continue more than three hundred and fifty weeks from the date of the injury. Compensation under this Title to aliens not residents (or about to become nonresidents) of the United States or Canada shall be the same amount as provided for residents, except that dependents in any foreign country shall be limited to a surviving wife and child, or children, or if there be no surviving wife or child, to a surviving father or mother whom the employee has supported, either wholly or in part, for the period of three years prior to the date of the injury, and except that the Commission may, at its option, or, upon the application of the insurance carrier, shall, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the Commission.

1942 Code § 7035-41; 1936 (39) 1231; 1937 (40) 613; 1953 (48) 103.

Effect of amendment.—The amendment increased the maximum weekly compensation from \$25.00 to \$35.00.

CHAPTER 6.

NOTICE OF ACCIDENT; FILING CLAIMS; MEDICAL ATTENTION AND EXAMINATION.

§ 72-301. Notice of accident.

The purpose of this section is at least twofold: First, it affords protection of the employer in order that he may investigate the facts and question witnesses while their memories are unfaded; and second, it affords the employer opportunity to furnish medical care of the employee in order to minimize the disability and consequent liability upon the employer. *Mintz v. Fiske-Carter Const. Co.*, 218 S. C. 409, 63 S. E. (2d) 50 (1951); *Teigue v. Appleton Co.*, 221 S. C. 52, 68 S. E. (2d) 878 (1952).

The purpose of this section and § 72-302 is to enable the employer to investigate the claim and to give prompt medical attention if necessary. *Ashe v. Rock Hill Hdw. Co.*, 219 S. C. 159, 64 S. E. (2d) 396 (1951).

The provision of this section for notice should be liberally construed in favor of claimants, but there are limitations upon that rule and the statutory requirement cannot be disregarded altogether. *Mintz v. Fiske-Carter Const. Co.*, 218 S. C. 409, 63 S. E. (2d) 50 (1951); *Teigue v. Appleton Co.*, 221 S. C. 52, 68 S. E. (2d) 878 (1952).

But the required notice is not to be treated as a mere formality or technicality and dispensed with as a matter of course. *Mintz v. Fiske-Carter Const. Co.*, 218 S. C. 409, 63 S. E. (2d) 50 (1951); *Harpe v.*

Kline Iron, etc., Works, 219 S. C. 527, 66 S. E. (2d) 30 (1951); *Teigue v. Appleton Co.*, 221 S. C. 52, 68 S. E. (2d) 878 (1952).

The last sentence of this section is plain and mandatory. *Mintz v. Fiske-Carter Const. Co.*, 218 S. C. 409, 63 S. E. (2d) 50 (1951); *Teigue v. Appleton Co.*, 221 S. C. 52, 68 S. E. (2d) 878 (1952).

Notice in fact.—An employer cannot claim prejudice because the notice of injury required by this section was not given where he had full notice in fact. But the employer's knowledge of the fact that an employee became ill while at work does not necessarily, of itself, charge the employer with notice that such illness constituted or resulted in a compensable injury. *Teigue v. Appleton Co.*, 221 S. C. 52, 68 S. E. (2d) 878 (1952).

The defense of reasonable excuse for failure to give notice and lack of prejudice to the employer is jurisdictional, and a direct and positive ruling by the Commission thereabout is necessary, it being made the fact-finding body or agency as to such defense. *Harpe v. Kline Iron, etc., Works*, 219 S. C. 527, 66 S. E. (2d) 30 (1951).

Applied in *Raley v. Camden*, 222 S. C. 303, 72 S. E. (2d) 572 (1952).

§ 72-302. Nature of notice; service.

Applied in *Raley v. Camden*, 222 S. C. 303, 72 S. E. (2d) 572 (1952).

Quoted in *Mintz v. Fiske-Carter Const. Co.*, 218 S. C. 409, 63 S. E. (2d) 50 (1951); *Harpe v. Kline Iron, etc., Works*, 219 S.

C. 527, 66 S. E. (2d) 30 (1951); *Teigue v. Appleton Co.*, 221 S. C. 52, 68 S. E. (2d) 878 (1952).

Cited in *Ashe v. Rock Hill Hdw. Co.*, 219 S. C. 159, 64 S. E. (2d) 396 (1951).

§ 72-303. Time for filing claim.

Purpose of section.—The filing with the Commission of a claim for compensation is an altogether different requirement from the requirement of notice in §§ 72-301 and 72-302, its object being to protect employers and their insurance carriers against long delayed demands. *Ashe v. Rock Hill Hdw. Co.*, 219 S. C. 159, 64 S. E. (2d) 396 (1951).

This section should be given a liberal construction.

While it is true that this section should be given a liberal construction, yet the court is not justified in so construing it as to do violence to a specific requirement of the Compensation Act. Such statutes apply with full force to the most meritorious claims. *Ashe v. Rock Hill Hdw. Co.*, 219

S. C. 159, 64 S. E. (2d) 396 (1951).

The fact that a claimant may have been unaware of the requirement, etc.

In accord with paragraph under this catchline in Code. See *Ashe v. Rock Hill Hdw. Co.*, 219 S. C. 159, 64 S. E. (2d) 396 (1951).

Under certain circumstances an employer may waive the filing, etc.

In accord with paragraph under this catchline in Code. See *Ashe v. Rock Hill Hdw. Co.*, 219 S. C. 159, 64 S. E. (2d) 396 (1951).

Estoppel.

In accord with 1st paragraph under this catchline in Code. See *Ashe v. Rock Hill Hdw. Co.*, 219 S. C. 159, 64 S. E. (2d) 396 (1951).

§ 72-305. Medical, hospital, surgical, etc., treatment and supplies; artificial members.

As to recovery by employee on hospital and surgical expense insurance policy, notwithstanding payment of such expenses pursuant to this section, see *Shealey v.*

American Health Ins. Corp., 220 S. C. 79, 66 S. E. (2d) 461, 27 A. L. R. (2d) 942 (1951).

§ 72-306. Liability of employer therefor; malpractice.

Applied in *Whitfield v. Daniel Construction Co.*, — S. C. —, 83 S. E. (2d) 460 (1954).

§ 72-307. Physical examinations; facts learned by doctors not privileged; autopsy.

The commission is empowered under this section to order an examination of claimant by nonresident physicians. If the Commission should abuse its discretion in this respect, such abuse is subject to correction by the courts. *Ward v. Dixie Shirt Co.*, 223 S. C. 448, 76 S. E. (2d) 605 (1953).

Denial of employer's motion for physical examination of employee held abuse of discretion. *Cord v. E. H. Hines Const. Co.*, 220 S. C. 356, 67 S. E. (2d) 677 (1951).

Refusal to submit to spinal myelogram test justified.—The facts of the case reasonably warranted the conclusion of the Industrial Commission that claimant was justified in refusing to submit to a spinal myelogram test at the hands of the doctor

selected by the employer. *Ward v. Dixie Shirt Co.*, 223 S. C. 448, 76 S. E. (2d) 605 (1953).

Review of Commission's finding of justified refusal.—Where the facts are disputed and are subject to more than one reasonable inference as to whether the employee is justified in refusing to submit to an examination requested by his employer, the conclusion of the Industrial Commission thereabout is final. But where the circumstances warrant only one reasonable inference, the question becomes one of law rather than of fact and the decision of the Industrial Commission is subject to review. *Ward v. Dixie Shirt Co.*, 223 S. C. 448, 76 S. E. (2d) 605 (1953).

CHAPTER 7.

PROCEDURE IN CONNECTION WITH AWARDS.

§ 72-353. Commission may appoint doctor to examine injured employee; compensation.

Quoted in *Cord v. E. H. Hines Const. Co.*, 220 S. C. 356, 67 S. E. (2d) 677 (1951).

§ 72-354. Conduct of hearing; award.

Absence of Commissioners during oral arguments.—See *McCoy v. Easley Cotton Mills*, 218 S. C. 350, 62 S. E. (2d) 772

(1950); *Malphrus v. State Comm. of Forestry, etc.*, 221 S. C. 75, 69 S. E. (2d) 70 (1952).

§ 72-355. Review and rehearing.

Granting or refusal of continuance within Commission's discretion.—Industrial Commission is quasi judicial board and as such is vested with a wide discretion in procedural matters, and granting or refusal of continuance rests in the sound discretion of Commission and such discretion when exercised will not be interfered with unless abuse thereof is shown. *Gurley v. Mills Mill*, 225 S. C. 46, 80 S. E. (2d) 745 (1954).

Right of Supreme Court to affirm by equally divided vote not applicable to Commission.—The right of the Supreme Court to affirm the lower court where there is an equal division in the vote stems from Art. 5, Sec. 12, of the S. C. Constitution, which

only pertains to decisions of that court and is not applicable to the Industrial Commission. *Gurley v. Mills Mill*, 225 S. C. 46, 80 S. E. (2d) 745 (1954).

Where vote of Commission equally divided, rehearing proper.—Where one of the commissioners, who heard the case on review, left office without voting on the decision, and the vote of the remaining four commissioners was equally divided and the Commission was unable to reach a decision, the Commission properly reassigned the case for another hearing. *Gurley v. Mills Mill*, 225 S. C. 46, 80 S. E. (2d) 745 (1954).

§ 72-356. Conclusiveness of award; appeal; payment of compensation during appeal.**I. GENERAL CONSIDERATION.**

Order denying motion for physical examination appealable.—An order of the Industrial Commission denying an employer's motion for a physical examination of the claimant pursuant to § 72-307 is appealable notwithstanding that there has been no award by the Commission. *Cord v. E. H. Hines Const. Co.*, 220 S. C. 356, 67 S. E. (2d) 677 (1951).

The thirty-day limit of stay or super-sedeas applies to appeals from the Commission to the court of common pleas. *Cord v. E. H. Hines Const. Co.*, 220 S. C. 356, 67 S. E. (2d) 677 (1951).

Administrative proceeding incomplete until appeal disposed of.—An award of the Commission is reviewable by appeal, and judgment may be had only with respect to an award "unappealed from" or an award "affirmed upon appeal". If there is an appeal from the award, the administrative proceeding is incomplete until the appeal has been disposed of, and until that time it cannot be said that a cause of action at law in favor of plaintiff has been created by the award. *St. Paul-Mercury Indemnity Co. v. Sylvan*, 213 F. (2d) 137 (1954), reversing 116 F. Supp. 601.

Applied in *Brown v. Gunter, Inc.*, 221 S. C. 189, 69 S. E. (2d) 596 (1952).

II. REVIEW.**A. Conclusiveness of Findings.**

The function of the Commission as to whether the evidence is sufficient, etc.

In accord with paragraph under this catchline in Code. See *Windham v. Florence*, 221 S. C. 350, 70 S. E. (2d) 553 (1952).

A conclusion by the Industrial Commission by way of reasonable inference from the evidence is a finding of fact. *Windham*

v. Florence, 221 S. C. 350, 70 S. E. (2d) 553 (1952).

Upon admitted or established facts the question of whether an accident is compensable is a question of law, and review thereof is not an invasion of the fact-finding field of the Commission on the part of the court. *Jordan v. Dixie Chevrolet*, 218 S. C. 73, 61 S. E. (2d) 654 (1950); *Sylvan v. Sylvan Bros.*, — S. C. —, 82 S. E. (2d) 794 (1954).

The question whether an injury arose out of or in the course of the employment is one of law where the facts are admitted, and one of fact where the evidence is conflicting. *Williams v. Columbia*, 218 S. C. 287, 62 S. E. (2d) 469 (1950).

Whether at time of injury employee was acting pursuant to, or in violation of, his orders, was an issue of fact which was resolved by Commission in favor of employee, and such finding, being based upon substantial evidence, binding upon courts. *Lomax v. City of Greenville*, — S. C. —, 82 S. E. (2d) 191 (1954).

B. Jurisdictional Facts.**Court may review jurisdictional facts.**

The circuit court, and the Supreme Court, on the appeal of either party to the proceeding, has both the power and the duty to consider all the evidence in the record, and find therefrom the jurisdictional facts, without regard to the finding of such facts, by the Commission. *Watson v. Wanamaker & Wells*, 212 S. C. 506, 48 S. E. (2d) 447 (1948); *Horton v. Baruch*, 217 S. C. 48, 59 S. E. (2d) 545 (1950).

C. Evidence to Support Finding.**Court may review facts, etc.**

In accord with 1st paragraph under this catchline in Code. See *Schrader v. Monarch Mills*, 215 S. C. 357, 55 S. E. (2d) 285

(1949); *Hewitt v. Cheraw Cotton Mills*, 217 S. C. 90, 59 S. E. (2d) 712 (1950); *Teigue v. Appleton Co.*, 221 S. C. 52, 68 S. E. (2d) 878 (1952); *Heirs v. Brunson Const. Co.*, 221 S. C. 212, 70 S. E. (2d) 211 (1952).

The Supreme Court and the circuit court, etc.

In accord with 1st paragraph under this catchline in Code. See *Raley v. Camden*, 222 S. C. 303, 72 S. E. (2d) 572 (1952); *Price v. B. F. Shaw Co.*, 224 S. C. 89, 77 S. E. (2d) 491 (1953); *Mason v. Woodside Mills*, 225 S. C. 15, 80 S. E. (2d) 344 (1954); *Gurley v. Mills Mill*, 225 S. C. 46, 80 S. E. (2d) 745 (1954).

It is well settled that findings of fact by the Industrial Commission are conclusive and binding upon both the court of common pleas and the Supreme Court, if there is any competent evidence reasonably tending to support them, even though there is evidence that would have supported a finding to the contrary. *Willard v. Com'r's of Public Works*, 219 S. C. 477, 65 S. E. (2d) 874 (1951).

The limit of the inquiry which the appellate court is permitted to make is whether there is any competent testimony reasonably tending to support the finding of fact by the Commission and the sufficiency of the evidence is for the Industrial Commission. *Windham v. Florence*, 221 S. C. 350, 70 S. E. (2d) 553 (1952).

An award may be reversed if there is an absence of any competent evidence, etc.

In accord with 1st paragraph under this catchline in Code. See *Malphrus v. State Comm. of Forestry, etc.*, 221 S. C. 75, 69 S. E. (2d) 70 (1952), also *Whitfield v. Daniel Construction Co.*, — S. C. —, 83 S. E. (2d) 460 (1954).

In accord with 2nd paragraph under this catchline in Code. See *Willard v. Com'r's of Public Works*, 219 S. C. 477, 65 S. E. (2d) 874 (1951); *Malphrus v. State Comm. of Forestry, etc.*, 221 S. C. 75, 69 S. E. (2d) 70 (1952); *Windham v. Florence*, 221 S. C. 350, 70 S. E. (2d) 553 (1952); *Hopper v. Firestone Stores*, 222 S. C. 143, 72 S. E. (2d) 71 (1952); *Raley v. Camden*, 222 S. C. 303, 72 S. E. (2d) 572 (1952); *Price v. B. F. Shaw Co.*, 224 S. C. 89, 77 S. E. (2d) 491 (1953).

When evidence regarded as sufficient.—The evidence will ordinarily be regarded as sufficient where the circumstances shown tend to establish the ultimate facts in issue and provide a basis from which they reasonably may be inferred. An award cannot, however, be based upon mere possibilities, probabilities, surmises or conjectures. *Broughton v. South Carolina Game, etc., Dept.*, 219 S. C. 50, 64 S. E. (2d) 152 (1951).

Circumstantial evidence may be sufficient to support an award, and it may be

based on inference drawn from circumstantial evidence which need not reach such degree of certainty as to exclude every reasonable or possible conclusion other than that reached. *Whitfield v. Daniel Construction Co.*, — S. C. —, 83 S. E. (2d) 460 (1954).

III. SUPERSEDEAS.

Award immediately due and payable after thirty days notwithstanding appeal to Supreme Court.—In diversity action for recovery of award under S. C. Workmen's Compensation Act, commenced when thirty days had elapsed after the award, Federal district court, following the South Carolina law, held that the award, with interest, was immediately due and payable, notwithstanding the pending appeal to the Supreme Court of South Carolina, and rendered judgment accordingly. *Sylvan v. St. Paul-Mercury Indem. Co.* 116 F. Supp. 601 (1953). (Ed. note: reversed in 213 F. (2d) 137.)

Pending appeal, jurisdiction to enforce payment in State court and not Federal courts.—The effect of this section is not to create a cause of action but to regulate procedure on appeal from an administrative award, the payments therein required being enforceable by the State court as an incident of its jurisdiction on review, not by action in an independent tribunal. We know of no power in the Federal courts to give judgment for a portion of a State workmen's compensation award which has not become final because appeal from it is pending in a State court. If the power existed, no such interference with proceedings in State tribunals would be justified under principles of comity prevailing between courts of coordinate jurisdiction. *St. Paul-Mercury Indemnity Co. v. Sylvan*, 213 F. (2d) 137 (1954), reversing 116 F. Supp. 601.

Where award reversed by court, claimant not entitled to payment of accrued amount of temporary disability.—Where circuit court heard at same time appeal from award of Commission and motion to require employer to pay forthwith accrued amount of temporary total disability, and court reversed award of Commission and properly found it unnecessary to pass upon motion, claimant's award was neither an award of the Commission unappealed from or an award of the Commission affirmed upon appeal and was therefore incapable of enforcement by entry of judgment, and claimant was not entitled to payment of award for temporary total disability, in view of circuit court's reversal rendering award of no effect and no longer in existence, for if circuit court had ordered payment of award, claimant would have become immediately bound to restore any payment so received under well-established principle that party who has received pay-

ment under judgment subsequently reversed must restore any advantages obtained thereby to his adversary, and it would be neither logical nor just for a court to compel one person to pay money to another when the latter would be at once obligated to return the money so received. *Miller v. Springs Cotton Mills*, _____ S. C. _____, 82 S. E. (2d) 458 (1954). (Editor's note.—This point in this case was decided by an equally divided court, there being a dissent on the question by two of the four members of the Court sitting. As has been noted above, the circuit judge did not expressly pass upon the merits of the motion, except insofar as his determination that it was unnecessary to do so (held to be

sound by prevailing opinion) may be interpreted as holding that since there was no longer an award, claimant was not entitled to any payments, even though the supersedeas period had expired. The dissenting opinion states that in *Workmen's Compensation* cases the Court had not declared whether restitution was a matter of right, a matter of discretion, or entirely unavailable to the employer, and that this question had not been raised in this appeal. This poses the question of whether or not this holding establishes a precedent binding upon the Court when next the point is presented. See Sec. 12, Art. 5, S. C. Constitution, and note III thereto in Code.)

§ 72-357. Judgment on agreement or award.

Nothing in this section expressly or impliedly requires entry of judgment by counsel as is the practice in the case of a judgment at law upon verdict. The proceeding is more like a decree in equity upon a master's report. *McCants v. West Virginia Pulp, etc., Co.*, 223 S. C. 467, 76 S. E. (2d) 614 (1953).

What constitutes "judgment roll".—The award of the Commission, exceptions thereto upon appeal and order of the court thereupon constitute, without further formality or entry, the "judgment roll" as that term is used in this section. *McCants v. West Virginia Pulp, etc., Co.*, 223 S. C. 467, 76 S. E. (2d) 614 (1953).

§ 72-359. Review of award on change of condition.

An award of Commission is final except for review under this section, which can only be made within twelve months from date of last payment of compensation, and Commission was without authority in undertaking to retain jurisdiction for three hundred weeks pending future developments, by making award effect of which was to render employer and carrier liable

Administrative proceeding incomplete until appeal disposed of.—An award of the Commission is reviewable by appeal, and judgment may be had only with respect to an award "unappealed from" or an award "affirmed upon appeal". If there is an appeal from the award, the administrative proceeding is incomplete until the appeal has been disposed of, and until that time it cannot be said that a cause of action at law in favor of plaintiff has been created by the award. *St. Paul-Mercury Indemnity Co. v. Sylvan*, 213 F. (2d) 137 (1954), reversing 116 F. Supp. 601.

Cited in *Miller v. Springs Cotton Mills*, _____ S. C. _____, 82 S. E. (2d) 458 (1954).

for partial disability if at any time during period of three hundred weeks claimant became unable because of his injury to earn as much as he did before accident, which had effect of circumventing the time limitation of this section. *Keeter v. Clifton Mfg. Co.*, _____ S. C. _____, 82 S. E. (2d) 520 (1954).

CHAPTER 8.

INSURANCE AND SELF-INSURANCE.

Sec.

72-419. Tax on self-insurers.

§ 72-401. Employer to secure payment of compensation; extent of liability.

Employee cannot maintain action against co-employee.—An employee, subject with his employer to the provisions of the *Workmen's Compensation Act* of this State, whose injury arises out of, and in the course of his employment, cannot main-

tain an action at common law against his co-employee, whose negligence caused the injury. *Nolan v. Daley*, 222 S. C. 407, 13 S. E. (2d) 449 (1952); *Burns v. Carolina Power, etc., Co.*, 193 F. (2d) 525 (1951).

§ 72-419. Tax on self-insurers.

Every employer carrying his own risk under the provisions of § 72-402 shall, under oath, report to the Insurance Commissioner of South Carolina his actual cost incurred under the provisions of this Title. Such report shall be made in the form prescribed by the Commissioner and at the time provided in this chapter for

premium reports by insurance carriers. The Commissioner shall assess against such actual cost incurred a maintenance tax computed by taking four and one-half per cent of the actual cost of operating under the provisions of this Title as determined by the Insurance Commissioner. Such assessments shall be paid to the Insurance Commissioner of South Carolina who in turn shall deposit them with the State Treasurer.

1942 Code § 7035-76; 1936 (39) 1231; 1937 (40) 613; 1953 (48) 112.

Effect of amendment.—The amendment substituted the phrase “actual cost incurred under” for the phrase “payroll subject to” in the first sentence and the words “actual cost incurred” for the word “payroll” in the third sentence. It also substituted the phrase “actual cost of operating under the provisions of this Title as determined by the Insurance Commissioner” for the phrase “basis premiums charged against the same or most similar industry or business taken from the manual of insurance rates that are in force in this State” in the third sentence.

§ 72-422. Insurance carrier’s rights same as employer’s.

Applied in *Greene v. Miller*, 114 F. Supp. 150 (1953).

CHAPTER 9.

STATE WORKMEN’S COMPENSATION FUND.

Sec.

72-456.1. Same; exception for Newberry County.

§ 72-456.1. Same; exception for Newberry County.

Provisions of A. & J. R. 1953 (48) 69 make up this section.

CHAPTER 10.

REPORTS AND RECORDS.

§ 72-501. Records and reports of injuries.

Applied in *Ashe v. Rock Hill Hdw. Co.*, 219 S. C. 159, 64 S. E. (2d) 396 (1951).

**CODE OF LAWS
OF
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1952**

1954 Cumulative Supplement

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VOLUME 7

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ST. MATTHEWS, S. C.**

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NOTICE

This pocket supplement is not official. At the direction of the Committee on Statutory Laws the Acts as enacted have been edited in various particulars to conform them to the style and arrangement of the Code of 1952 and to make them more readily usable by the practitioner for ordinary work. For further details see the Foreword in the Pocket Supplement to Volume 1.

Code of Laws of South Carolina 1952

1954 CUMULATIVE SUPPLEMENT

Constitution of the United States of America of 1787 and Amendments

Article 1.

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Use tax on goods purchased outside State.—See note to § 65-1421.

Order of Public Service Commission requiring railroad round-the-clock watchman at highway crossing was reasonable under

facts of this case and not unnecessary burden on interstate commerce nor arbitrary and oppressive, in violation of commerce and due process clauses of Federal and State Constitutions. *Atlantic Coast Line R. Co. v. Public Service Com'n*, ... S. C., 81 S. E. (2d) 357 (1954).

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Cited in *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

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ARTICLE V.

Rights of accused in criminal proceedings; due process; eminent domain.

I. GENERAL CONSIDERATION.

Cited in *Tedder v. Coca-Cola Bottling Co.*, 224 S. C. 46, 77 S. E. (2d) 293 (1953); *Ex parte Orr*, 110 F. Supp. 153 (1952); *United States v. Zerbst*, 111 F. Supp. 807 (1953).

II. TAKING PROPERTY FOR PUBLIC USE.

Factual issue of necessity for taking tried by court. — Where, in eminent domain proceedings, the factual issue of the necessity of taking the property is for

trial by the court, an impartial tribunal, this satisfies the State and Federal constitutional requirements of due process of law and affords equal protection of the law. *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

Exercise of power of eminent domain by rural electric cooperative.—See note to § 12-1025.

All elements entering into the value of the property taken must be given consideration in arriving at just compensation. *United States v. Twin City Power Company*, 215 F. (2d) 592 (1954).

The fact that the most profitable use of a parcel can be made only in combination with other lands does not necessarily exclude that use from consideration if the possibility of combination is reasonably sufficient to affect market value. *United States v. Twin City Power Company*, 215 F. (2d) 592 (1954).

Highest and most profitable use to be considered.—The highest and most profitable use for which the property is adaptable

and needed or likely to be needed in the reasonably near future is to be considered, not necessarily as the measure of value, but to the full extent that the prospect of demand for such use affects the market value while the property is privately held. *United States v. Twin City Power Company*, 215 F. (2d) 592 (1954).

Any taking outside the bed of the stream of adjacent "fast" lands must be compensated for as in any other taking of private property, even where improvement of navigation is the purpose, since the limitations of this article apply to the government when exercising the commerce power as well as other powers. *United States v. Twin City Power Company*, 215 F. (2d) 592 (1954).

Availability of adjacent lands for water power purposes gives them a value which they would not otherwise have, and such value should be considered in fixing just compensation. *United States v. Twin City Power Company*, 215 F. (2d) 592 (1954).

ARTICLE VI.

Right to speedy trial, witnesses, etc.

No right to be present at hearing of motion for new trial.—Refusal to permit the defendant to be present in person at the hearing of a motion for a new trial on newly or after discovered evidence did not

violate this amendment. *State v. Corn*, 224 S. C. 74, 77 S. E. (2d) 354 (1953).

Cited in Ex parte Orr, 110 F. Supp. 153 (1952).

ARTICLE VII.

Trial by jury in civil cases.

Cited in Ex parte Orr, 110 F. Supp. 153 (1952).

ARTICLE VIII.

Bail, fines and punishments.

Cross reference.—See note to S. C. Const. Art. 1, § 19.

Cited in Ex parte Orr, 110 F. Supp. 153 (1952).

ARTICLE IX.

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Cited in Ex parte Orr, 110 F. Supp. 153 (1952).

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ARTICLE XIV.

I. GENERAL CONSIDERATION.

Cited in State v. Harvey, 220 S. C. 506, 68 S. E. (2d) 409 (1951); *Tedder v. Coca-Cola Bottling Co.*, 224 S. C. 46, 77 S. E. (2d) 293 (1953).

III. DUE PROCESS OF LAW.

C. Where Due Process Not Violated.

The Federal court has no right to set aside a judgment in a State court on the ground of perjury in securing the judg-

ment unless a definite showing is made that the State court acted in an arbitrary manner in refusing to consider the plaintiff's rights. *Bryan v. Bryan*, 109 F. Supp. 366 (1952).

An ordinance prohibiting taxicabs from parking elsewhere than at their regular stands except when engaged in answering calls or transporting passengers, was not discriminatory against taxicab owners and operators as citizens and taxpayers or violative of this amendment. *Radio Cab Co. v. Bagby*, 224 S. C. 28, 77 S. E. (2d) 264 (1953).

Statute providing for forfeiture of unlicensed shrimp boat.—See *Shipman v. Du Pre*, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

Use of public funds for construction of cafeteria in State building.—See *Caldwell v. McMillan*, 224 S. C. 150, 77 S. E. (2d) 798 (1953).

Order of Public Service Commission requiring railroad round-the-clock watchman at highway crossing was reasonable under facts of this case and not unnecessary burden on interstate commerce nor arbitrary and oppressive, in violation of commerce and due process clauses of Federal and State Constitutions. *Atlantic Coast Line R. Co. v. Public Service Com'n*, ... S. C., 81 S. E. (2d) 357 (1954).

Protection afforded against self incrimination may not be injected to invalidate court's order to appear or subpoena merely because of possibility that witness may be asked some question answer to which might tend to incriminate him. *Greenwood Lumber Co. v. Cromer*, ... S. C., 82 S. E. (2d) 527 (1954).

Acquiring jurisdiction of nonresident corporate director.—Where a state has an interest in regulating operations and transactions by nonresidents, it has power to enact appropriate legislation for the bringing of a nonresident into its forum in actions affecting his transactions in that state, and § 10-432.1 providing for service upon nonresident corporate director, being neither an arbitrary nor unreasonable attempt to exercise the authority vested in it in the public interest, is not constitutionally objectionable as denying due process. *Wagenberg v. Charleston Wood Products*, 122 F. Supp. 745 (1954).

Exemption of rural electric cooperatives from taxation constitutional.—Exemption of rural electric cooperatives from taxation does not violate the provisions as to uniformity of taxation contained in Art. 10, §§ 1 and 5, of the State Constitution or the due process or the equal protection clauses of the 14th Amendment to the Federal Constitution. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

IV. EQUAL PROTECTION OF THE LAWS.

A. Scope of Clause.

With respect to education.

When the State undertakes public education, it may not discriminate against any individual on account of race, but must offer equal opportunity to all. *Briggs v. Elliott*, 98 F. Supp. 529 (1951). See *Briggs v. Elliott*, 103 F. Supp. 920 (1952); *Briggs v. Elliott*, 342 U. S. 350, 72 S. Ct. 327, 96 L. Ed. 392 (1952).

B. Where Equal Protection Violated.

Intentional exclusion of Negroes from jury.—Equal protection of the laws is denied to a Negro charged with a crime whenever by any action of a State, whether through its legislature, through its courts, or through its executive or administrative officers, Negroes are intentionally excluded, solely because of their race or color, from serving upon the grand jury that indicts the defendant or the petit jury which tries him. *State v. Waitus*, 224 S. C. 12, 77 S. E. (2d) 256 (1953).

C. Where Equal Protection Not Violated.

Jury without Negro members.

This amendment does not give a Negro charged with a crime in a State court the right to demand that the grand or petit jury, which considers his case, shall be composed, either in whole or in part, of citizens of his own race. *State v. Waitus*, 224 S. C. 12, 77 S. E. (2d) 256 (1953).

The exemption of certain counties from the operation of § 21-852, relating to payment of tuition by parents of children attending public schools in districts other than the one in which they reside, does not deny due process or the equal protection of the laws guaranteed by this amendment. *Moseley v. Welch*, 218 S. C. 242, 62 S. E. (2d) 313 (1950).

Segregation of the races in the public schools, as required by the Constitution and statutes of South Carolina, is not of itself a denial of the equal protection of the laws guaranteed by this amendment. *Briggs v. Elliott*, 98 F. Supp. 529 (1951). See *Briggs v. Elliott*, 103 F. Supp. 926 (1952); *Briggs v. Elliott*, 342 U. S. 350, 72 S. Ct. 327, 96 L. Ed. 392 (1952).

Cafeteria in State building.—An act authorizing the State Highway Department to build, equip and have operated a cafeteria in its Administration Building does not put the State in the restaurant business, in unfair competition with private persons owning restaurants and cafes and deny them equal protection of law. *Caldwell v. McMillan*, 224 S. C. 150, 77 S. E. (2d) 798 (1953).

Exemption of rural electric cooperatives from taxation constitutional.—Exemption of rural electric cooperatives from taxation does not violate the provisions as to uni-

formity of taxation contained in Art. 10, §§ 1 and 5, of the State Constitution or the due process or the equal protection clauses of the 14th Amendment to the Federal Constitution. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

ARTICLE XV.

Cited in *Briggs v. Elliott*, 98 F. Supp. 529 (1951), dis. op. of Waring, D. J.

ARTICLE XIX.

Woman suffrage.

Cited in *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

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(As Amended Through the 1954 Session of the General Assembly)

Article II.

Right of Suffrage.

Sec.

2. Qualification for office; two offices.

Article V.

Judicial Department.

1. Judicial power vested in certain courts.

20. Magistrates; term of office; constables; salary.

Sec.

21. Jurisdiction of magistrates; examining courts.

Article X.

Finance and Taxation.

5. Taxes may be levied for corporate purposes; shares of stockholders; limit of bonded debt.

Article XI.

5. [Repealed.]

ARTICLE I.

DECLARATION OF RIGHTS.

§ 4. Religious worship; freedom of speech; petition.

Cited in *Dillon County v. Maryland Cas. Co.*, 217 S. C. 66, 59 S. E. (2d) 640 (1950).

§ 5. Privileges and immunities; protection of laws.

I. GENERAL CONSIDERATION.

Cited in *Dillon County v. Maryland Cas. Co.*, 217 S. C. 66, 59 S. E. (2d) 640 (1950); *Johnson v. Abney Mills*, 219 S. C. 231, 64 S. E. (2d) 641 (1951); *Moss v. South Carolina State Highway Dept.*, 223 S. C. 282, 75 S. E. (2d) 462 (1953); *Tedder v. Coca-Cola Bottling Co.*, 224 S. C. 46, 77 S. E. (2d) 293 (1953).

II. DUE PROCESS OF LAW.

B. Where Due Process Not Denied.

Use tax on goods purchased outside State.—*State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

Exemptions from sales and use taxes.—*State v. Brynes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

Exemption of certain counties from operation of § 21-852.—See this note, analysis line III, B.

Assumption by new school district of indebtedness of constituent district.—*Smith v. Lexington School Dist. No. 1*, 219 S. C. 191, 64 S. E. (2d) 534 (1951).

Transfer of property of old school district to new at less than reasonable value.—*Nesbitt v. Gettys*, 219 S. C. 221, 64 S. E. (2d) 651 (1951).

Statute providing for forfeiture of unlicensed shrimp boat.—See *Shipman v. Du Pre*, 222 S. C. 475, 73 S. E. (2d) 716 (1952).

Statute requiring approval of Board of Bank Control as prerequisite to incorporation of bank.—*Floyd v. Thornton*, 220 S. C. 414, 68 S. E. (2d) 334 (1951).

Compulsory examination of accused to determine mental condition.—Where in-

sanity is interposed as a defense, the compulsory examination of an accused by experts for the purpose of determining his mental condition and testifying in regard thereto does not violate the constitutional guaranty of due process of law. *State v. Myers*, 220 S. C. 309, 67 S. E. (2d) 506, 32 A. L. R. (2d) 430 (1951).

Use of public funds for construction of cafeteria in State building.—*Caldwell v. McMillan*, 224 S. C. 150, 77 S. E. (2d) 798 (1953).

Order of Public Service Commission requiring railroad round-the-clock watchman at highway crossing was reasonable under facts of this case and not unnecessary burden on interstate commerce nor arbitrary and oppressive, in violation of commerce and due process clauses of Federal and State Constitutions. *Atlantic Coast Line R. Co. v. Public Service Com'n*, ... S. C. ..., 81 S. E. (2d) 357 (1954).

III. EQUAL PROTECTION OF LAWS.

B. Where Equal Protection Not Denied.

Exemptions from sales and use taxes.—*State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

The exemption of certain counties from the operation of § 21-852, relating to payment of tuition by parents of children attending public schools in districts other than the one in which they reside, does not deny due process or the equal protection of the laws guaranteed by this section. *Moseley v. Welch*, 218 S. C. 242, 62 S. E. (2d) 313 (1950).

Cafeteria in State building.—An act authorizing the State Highway Department to build, equip and have operated a cafeteria in its Administration Building does not put the State in the restaurant business, in unfair competition with private persons owning restaurants and cafes and deny them equal protection of law. *Caldwell v. McMillan*, 224 S. C. 150, 77 S. E.

§ 6. Taxation.

This section is inapplicable to license or excise taxes, which the sales tax is. State

§ 8. Attainder; ex post facto law.

I. IMPAIRMENT OF CONTRACTS.

A. General Consideration.

Cited in *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

B. Application of Section.

Act providing for assumption of indebtedness of old school districts by new.—An act providing for the consolidation of the

§ 10. Elections free and open.

This section applies only to offices created by the Constitution. *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

Qualifications for office of school trustee.

§ 14. Departments separate.

II. LEGISLATIVE POWERS.

Power of appointment to office may be delegated.—Where the legislature creates an office, it may, when not restricted by the Constitution, confer the power of appointment thereto upon public officers or boards, as, for example, upon a judicial officer, or upon associations, corporations, or persons. This does not constitute an illegal delegation of legislative powers, since the power of appointment to office is not legislative. *Floyd v. Thornton*, 220 S. C. 414, 68 S. E. (2d) 334 (1951).

Power to classify certain persons as retailers for purpose of sales tax.—Section 65-1359, which vests in the State Tax Commission limited discretionary power to classify certain persons as retailers when in its opinion it is necessary for the efficient administration of the Retail Sales Tax Act, does not violate this section. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

This section is not violated by the provisions of the General Appropriation Act of 1951 whereby the State Educational Finance Commission is given power to promulgate reasonable rules and regulations which shall have the force and effect of

§ 15. Courts; remedy.

Cited in *Floyd v. Thornton*, 220 S. C. 414, 68 S. E. (2d) 334 (1951).

§ 17. Presentment of grand jury; not tried twice; private property.

I. PRIVATE PROPERTY.

A. Scope of Private Property Provision.

Public benefit and public use are not synonymous in the better and more clearly constitutional view. The latter (public use)

(2d) 798 (1953).

Statute requiring approval of Board of Bank Control as prerequisite to incorporation of Bank.—*Floyd v. Thornton*, 220 S. C. 414, 68 S. E. (2d) 334 (1951).

IV. PRIVILEGES AND IMMUNITIES.

Exemptions from sales and use taxes.—*State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

v. Byrnes, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

several school districts in a county into a single district, and for the assumption by the consolidated district of the indebtedness of the old districts, which indebtedness had previously been assumed by the county, did not impair the obligations of contracts. *Tindall v. Byars*, 217 S. C. 1, 59 S. E. (2d) 337 (1950).

—See note to S. C. Const., Art. 11, § 3.

Act giving unreasonably preferential status to women candidates for office.—See note to S. C. Const., Art. 11, § 3.

law, and the Governor and State Treasurer are authorized to issue State School Bonds for the construction and improvement of public school facilities on the basis of Commission estimates of the proceeds of the retail sales tax. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951). See §§ 21-58, 21-998.

Legislative delegation may not execute laws passed by legislature.—The provision in § 14-1356 and § 1 of Act No. 804, 1954 (48) 2018, preventing county auditor from levying tax without approval of county legislative delegation contravenes this section. *Atty. Gen. Op.*, Aug. 25, 1954.

IV. JUDICIAL POWERS.

Determination of sufficiency of special fund to meet obligations of bonds.—The determination of the sufficiency of the special fund derived from the proceeds of the retail sales tax to meet interest and principal maturities of such school bonds as shall be issued under § 21-998 is in the nature of a judicial function, but is not such as may not be delegated to executive and administrative officers under the Constitution. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

is necessary for the constitutional exercise of the power of eminent domain. *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

Issue of necessity for taking tried by

court.—Where, in eminent domain proceedings, the factual issue of the necessity of taking the property is for trial by the court, an impartial tribunal, this satisfies the State and Federal constitutional requirements of due process of law and affords equal protection of the law. *Bookhart v. Central Elec. Power Cooperative*, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

Exercise of power of eminent domain by rural electric cooperative.—See note to § 12-1025.

A. Scope of Private Property Provision.

Wife is not necessary party to proceeding to condemn husband's real estate. *Shelton v. Shelton*, _____ S. C. _____, 83 S. E. (2d) 176 (1954).

Inchoate right of dower subordinate to public right of eminent domain and is defeated by the taking of land for public use. *Shelton v. Shelton*, _____ S. C. _____, 83 S. E. (2d) 176 (1954).

Dower interest divested by condemnation.—As between holder of an inchoate right of dower and the sovereign, or political unit to which right of eminent domain has been delegated, wife is divested of any dower interest in land when condemned and compensation paid. *Shelton v. Shelton*, _____ S. C. _____, 83 S. E. (2d) 176 (1954).

Applied in Shonnard v. South Carolina Public Service Authority, 217 S. C. 458, 60 S. E. (2d) 894 (1950).

B. "Taking" of Private Property.

"Taken" includes "damaged."—The Supreme Court has thus far, on the facts then before it, so construed the word "taken" as to include the word "damaged." *Moss v. South Carolina State Highway Dept.*, 223 S. C. 282, 75 S. E. (2d) 462 (1953).

D. Where Private Property Not Taken.

Use of public funds for construction of cafeteria in State building.—See *Caldwell v. McMillan*, 224 S. C. 150, 77 S. E. (2d) 798 (1953).

II. COMPELLED TO BE A WITNESS.

Compulsory examination of accused to determine mental condition.—Where insanity is interposed as a defense, the compulsory examination of an accused by experts for the purpose of determining his mental condition and testifying in regard thereto does not violate the constitutional privilege of the accused of not being com-

pelled to be a witness against himself. *State v. Myers*, 220 S. C. 309, 67 S. E. (2d) 506, 32 A. L. R. (2d) 430 (1951).

Protection afforded against self incrimination may not be injected to invalidate court's order to appear or subpoena merely because of possibility that witness may be asked some question answer to which might tend to incriminate him. *Greenwood Lumber Co. v. Cromer*, _____ S. C. _____, 82 S. E. (2d) 527 (1954).

Applied in State v. Floyd, 223 S. C. 413, 76 S. E. (2d) 291 (1953).

III. FORMER JEOPARDY.

General test for double jeopardy.

In accord with paragraph under this catchline in Code. See *State v. Miller*, 225 S. C. 21, 80 S. E. (2d) 354 (1954).

Larceny acquittal bars prosecution for same offense.—Where United States post office was in enclosure in center of store, acquittal of defendant under indictment charging larceny of goods of store, and of others, would bar prosecution under indictment charging larceny of money from the post office, since the offenses were identical both in law and in fact, and plea of autrefois acquit should have been sustained. *State v. Miller*, 225 S. C. 21, 80 S. E. (2d) 354 (1954).

Breaking and entering acquittal does not bar prosecution for same offense as to premises of another.—Where United States post office was in enclosure in center of store, acquittal of defendant under indictment charging housebreaking and entering store would not bar prosecution under indictment charging same offense as to United States post office in possession of United States, and demurrer to plea of autrefois acquit was properly sustained. *State v. Miller*, 225 S. C. 21, 80 S. E. (2d) 354 (1954).

IV. INDICTMENT.

Conviction under evidence showing different offense from that in indictment.—Where the defendants were convicted of a crime for which they had been indicted by the grand jury—breaking and entering in the daytime—yet the evidence showed without dispute that the offense was committed in the nighttime, which constitutes an entirely different offense from that charged, the conviction should not be permitted to stand. *State v. Sweat*, 221 S. C. 270, 70 S. E. (2d) 234 (1952).

§ 18. Trial by jury; witnesses.

I. RIGHT TO BE FULLY HEARD.

This provision guarantees a defendant the right to be heard on all questions of law and fact which may arise at any time during the prosecution, and it implies that he shall have full opportunity and time as justice and the necessities of the case may

require. *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

Limiting each of seven attorneys for twenty-two defendants to five minutes in which to make a reply argument held error. *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

III. RIGHT TO BE CONFRONTED WITH WITNESSES.

No right to be present at hearing of motion for new trial.—Refusal to permit the defendant to be present in person at the hearing of a motion for a new trial on newly or after discovered evidence did not violate this section. *State v. Corn*, 224 S. C. 74, 77 S. E. (2d) 354 (1953).

Report of magistrate admissible to show prior conviction.—On the trial of a person

charged as a second offender for operating a motor vehicle while under the influence of intoxicating liquor, the admission in evidence of a report by a magistrate to the Highway Department, made pursuant to § 46-347, for the purpose of showing a prior conviction, does not violate the right guaranteed to an accused by this section, of being "confronted with the witnesses against him." *State v. Pearson*, 223 S. C. 377, 76 S. E. (2d) 151 (1953).

§ 19. Excessive bail; corporal punishment; contempt.

I. GENERAL CONSIDERATION.

Unless sentence is within legal limits.

In accord with paragraph under this catchline in Code. *State v. Hall*, 224 S. C. 546, 80 S. E. (2d) 239 (1954).

II. APPLICATION OF SECTION.

The punishment for conspiracy to commit a crime may exceed the penalty provided by statute for the completed offense. *State v. Ferguson*, 221 S. C. 300, 70 S. E. (2d) 355 (1952); *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

Sentence to commence after service of prior sentence.—A ten-year sentence for assault and battery with intent to kill, to

commence after the service of a two-year sentence which defendant is in the process of serving, does not amount to cruel and unusual punishment. *State v. King*, 222 S. C. 108, 71 S. E. (2d) 793 (1952).

Sentence of two years for first offense unlawful manufacture of liquors, not excessive.—Sentence of two years for unlawful manufacture of liquors, even though a first offense, was, although somewhat harsh, not excessive where record did not disclose partiality, prejudice, oppression or corrupt motive on part of sentencing judge in exercise of his discretion. *State v. Hall*, 224 S. C. 546, 80 S. E. (2d) 239 (1954).

ARTICLE II.

RIGHT OF SUFFRAGE.

§ 1. Elections by ballot.

Cited in *State v. Waitus*, 224 S. C. 12, 77 S. E. (2d) 256 (1953).

§ 2. Qualification for office; two offices.

Provided, the limitation above set forth shall not prohibit any office holder from being a delegate to a constitutional convention.

1951 (47) 798; 1953 (48) 72.

Effect of amendment.—The amendment added the above proviso at the end of this section. The rest of the section was not changed, and is therefore not set out.

Cross reference.—As to power of legislature to prescribe additional qualifications for office of school trustee, see note to S. C. Const., Art. 11, § 3.

I. GENERAL CONSIDERATION.

Cited in *Dillon County v. Maryland Cas. Co.*, 217 S. C. 66, 59 S. E. (2d) 640 (1950).

§ 4. Qualifications for suffrage.

I. GENERAL CONSIDERATION.

Cited in *Beaufort County v. Jasper*

II. APPLICATION OF SECTION.

And also ex officio membership on commission.

In accord with paragraph under this catchline in Code. See *Welling v. Clinton Newberry Natural Gas Authority*, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

This section applies only to offices created by the Constitution. *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

Act giving unreasonably preferential status to women candidates for office.—See note to S. C. Const., Art. 11, § 3.

County, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

ARTICLE III.

LEGISLATIVE DEPARTMENT.

§ 1. Legislative power vested in two branches.

II. LAWS NOT IN VIOLATION OF SECTION.

Section 6-334, relating to the appointment of a technical livestock committee, and § 6-345, delegating to such committee the power to make and enforce rules and regulations, do not violate this section. State

v. Taylor, 223 S. C. 526, 77 S. E. (2d) 195 (1953).

Statute providing for appointment of State Board of Bank Control.—Floyd v. Thornton, 220 S. C. 414, 68 S. E. (2d) 334 (1951). See § 8-52 and note.

§ 14. Members in attendance protected.

Cited in Tenney v. Brandhove, 341 U. S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951).

§ 17. One subject.

I. GENERAL CONSIDERATION.

Applied in Dillon County v. Maryland Cas. Co., 217 S. C. 66, 59 S. E. (2d) 640 (1950).

II. TITLE OF ACT.

Title need not be index to act's contents.

The title of an act is not of necessity a full index of the contents and, therefore, need not go into detail of every expenditure provided in the act itself when the general subject of the act is expressed in the title. The details, names, methods or instrumentalities with which the general purpose is to be accomplished, and are germane to the act, may be expressed in the body thereof without violating this section. Caldwell v. McMillan, 224 S. C. 150, 77 S. E. (2d) 798 (1953).

III. APPLICATION OF SECTION.

A. Acts Held Constitutional.

Amendatory act providing for election of sheriff in Kershaw county at 1954 general election and every four years there-

after did not violate this section. Brown v. Moseley, 22 S. C. 1, 71 S. E. (2d) 591 (1952).

The General Appropriation Act of 1951, which provided, among other things, for a program of construction of school buildings and other school facilities in the State, and for financing this program by authorizing the issuance of general obligation bonds of the State, and for a general retail sales tax, and pledge of sufficient revenue therefrom to retire the bonds organized in the act, did not violate this section. State v. Byrnes, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

The General Appropriation Act of 1952, which contained a proviso authorizing the State Highway Department to construct, equip and have operated a cafeteria for its employees in its Administration Building, did not violate this section. Caldwell v. McMillan, 224 S. C. 150, 77 S. E. (2d) 798 (1953).

§ 18. Formalities of act.

Act is conclusively presumed to be properly enacted.

In accord with paragraph under this

catchline in Code. See State v. Byrnes, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

§ 34. Special laws prohibited.

I. GENERAL CONSIDERATION.

Cited in McKown v. Daniel, 217 S. C. 510, 61 S. E. (2d) 163 (1950); Moseley v. Welch, 218 S. C. 242, 62 S. E. (2d) 313 (1950); Jennings v. Green, 219 S. C. 471, 65 S. E. (2d) 878 (1951); Baker v. Allen, 220 S. C. 141, 66 S. E. (2d) 618 (1951).

IV. INCORPORATION OF SCHOOL DISTRICTS.

And five districts may be consolidated, etc.

An act consolidating all of the existing school districts in a county into a single district consolidates rather than incorporates, and thereby does not offend subdiv. 4 of this section. Tindall v. Byars, 217 S. C. 1, 59 S. E. (2d) 337 (1950).

Act held to incorporate, rather than merely consolidate, school districts.—Smith v. Lexington School Dist. No. 1, 219 S. C. 191, 64 S. E. (2d) 534 (1951), holding that the act was nevertheless valid under the power given the General Assembly by an amendment to S. C. Const., Art. 11, § 5.

Constitutional amendments removing counties from operation of section.—Amendments to S. C. Const. Art. 11, § 5, which amendments provided that school districts in certain counties should be of such area as the General Assembly or the county board of education may prescribe, removed those counties from the bans of subdivs. 4 and 9 of this section. Tindall v. Byars, 217 S. C. 1, 59 S. E. (2d) 337 (1950);

Smith v. Lexington School District No. 1, 219 S. C. 191, 64 S. E. (2d) 534 (1951). As to S. C. Const., Art. 11, § 5, as subsequently amended, see that section.

VII. WHERE GENERAL LAW CAN BE MADE APPLICABLE.

B. Acts Violative of Section.

Act constituting special law where general venue statute has been made applicable.—See note to § 15-1233.

C. Acts Not Violative of Section.

Act imposing certain duties on probate judge.—The fact that a statute imposes upon the probate judge of a certain county duties not imposed upon other probate judges does not have the effect of making the statute special legislation of a kind prohibited by this section. Dillon County v. Maryland Cas. Co., 217 S. C. 66, 59 S. E. (2d) 640 (1950).

The Rural Electric Cooperative Act of 1939, now §§ 12-1001 et seq. of the Code, is not unconstitutional as a special instead of a general law. Bookhart v. Central Elec. Power Cooperative, 219 S. C. 414, 65 S. E. (2d) 781 (1951).

A statute creating a natural gas authority to construct, maintain and operate a natural gas distribution system serving

two municipalities and the surrounding area does not violate this section, notwithstanding a general law empowering all municipalities to construct and operate natural gas systems. Welling v. Clinton Newberry Natural Gas Authority, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

Section 59-182.1, which permits the landing of unemployed funds belonging to the Spartanburg Metropolitan District to the municipal waterworks system is not special legislation of the sort prohibited by this section. Spartanburg v. Blalock, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

VIII. SPECIAL PROVISIONS IN GENERAL LAW.

C. Acts Not Violative of Section.

Amendatory act relating to election of sheriff.—An act amending the general statute relating to election of sheriffs, which amendatory act provides for the election of the sheriff of Kershaw County in the general election in 1954 and every four years thereafter, comes within the proviso to this section, that the General Assembly may enact special provisions in general laws, and does not violate this section. Brown v. Moseley, 222 S. C. 1, 71 S. E. (2d) 591 (1952).

ARTICLE IV.

EXECUTIVE DEPARTMENT.

§ 11. Pardons; Probation, Parole and Pardon Board.

Cited in Bearden v. State, 223 S. C. 211, 74 S. E. (2d) 912 (1953).

ARTICLE V.

JUDICIAL DEPARTMENT.

§ 1. Judicial power vested in certain courts.

Provided, further, that the General Assembly shall establish a County Court for the County of Orangeburg whose jurisdiction shall be fixed by law within the limits above provided for County Courts; the Judge of the County Court for the County of Orangeburg shall be appointed by the Governor upon recommendation of a majority of the members of the Orangeburg County Bar Association for a term of four years, who shall continue in office until his successor shall qualify, and whose compensation shall be not less than sixty per cent of the salaries of Judges of Circuit Courts; and upon request of the County Judge or upon petition of a majority of the members of the Orangeburg County Bar Association, the Governor may appoint special judges to preside over the Court and perform any of the duties of the office whenever there may be necessity for such appointment; *provided*, however, that the General Assembly may abolish or re-establish the County Court of Orangeburg County, from time to time, upon a majority vote of the qualified electors of the County.

1952 (47) 2733; 1953 (48) 37.

Effect of amendment.—The amendment added the above provisos at the end of this section. The rest of the section was not changed, and is therefore not set out.

I. GENERAL CONSIDERATION.

Cited in Fordham v. Fordham, 223 S. C. 401, 76 S. E. (2d) 299 (1953).

§ 4. Jurisdiction of Supreme Court.

I. GENERAL CONSIDERATION.

Cited in *Ex parte Orr*, 110 F. Supp. 153 (1952).

Supreme Court has power to issue writs and orders and to set bond in any case.—Supreme Court has power to issue writs and orders referred to in this section, and Legislature has no power to take away powers specifically granted to court by Constitution, and Supreme Court has inherent power to set bond in any case and can grant bail, in its discretion, where sentence exceeds ten years, notwithstanding section 7-8 of the Code of 1952. *State v. Whitener*, _____ S. C. _____, 81 S. E. (2d) 784 (1954).

II. ORIGINAL JURISDICTION

Writ of habeas corpus can be addressed to Supreme Court in its original jurisdiction only under unusual circumstances, but such

presented in this instance. *State v. Whitener*, _____ S. C. _____, 81 S. E. (2d) 784 (1954).

III. JURISDICTION IN CHANCERY CASES.

The Supreme Court is fully empowered to review the facts and make findings contrary to those of trial courts of equity, in proper cases. It has jurisdiction in appeals in equity to find the facts in accord with its view of the preponderance or greater weight of the evidence, in absence of verdict by jury. *Gilbert v. McLeod Infirmary*, 219 S. C. 174, 64 S. E. (2d) 524, 24 A. L. R. (2d) 60 (1951).

But findings of a jury concurred in and adopted by the trial judge are not subject to review by the Supreme Court. *Thigpen v. Thigpen*, 217 S. C. 322, 60 S. E. (2d) 621 (1950).

§ 6. Disqualification of judges in certain cases; how vacancies filled; temporary appointments for holding circuit courts.

Cited in *Floyd v. Thornton*, 220 S. C. 414, 68 S. E. (2d) 334 (1951).

§ 12. Three necessary for reversal; constitutional questions; trial judge shall not sit.

I. GENERAL CONSIDERATION.

Quoted in *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

III. AFFIRMANCE AND REVERSAL.

Right to affirm by equally divided vote pertains only to Supreme Court.—The right of the Supreme Court to affirm the lower

court where there is an equal division in the vote stems from this provision, only pertains to decisions of the Supreme Court and is not applicable to the South Carolina Industrial Commission. *Gurley v. Mills Mill*, 225 S. C. 46, 80 S. E. (2d) 745 (1954).

§ 18. Court of general sessions.

First offense of unlawful possession of intoxicating liquor.—The court of general sessions has no jurisdiction to try a person for a first offense of unlawful possession of

intoxicating liquor, exclusive jurisdiction in such cases being in the magistrate courts under § 43-68, *State v. Castleman*, 219 S. C. 136, 64 S. E. (2d) 250 (1951).

§ 19. Court of probate.

Constitution vests no judicial power in court of probate.—Under decisions of the Supreme Court of South Carolina, the Constitution of 1895 vests no judicial power in

the court of probate. The probate court's jurisdiction is purely statutory. *Anderson v. Bowers*, 117 F. Supp. 884 (1954).

§ 20. Magistrates; term of office; constables; salary.

Provided, that in Allendale County the magistrates shall hold their offices for the term of four years and until their respective successors are appointed and qualified.

1951 (47) 873; 1953 (48) 73.

Effect of amendment.—The amendment added the above proviso at the end of this

section. The rest of the section was not changed, and is therefore not set out.

§ 21. Jurisdiction of magistrates; examining courts.

Provided, that in the County of York, the jurisdiction of magistrates in civil cases shall extend to where the value of property in controversy or the amount claimed is not more than three hundred dollars (\$300.00).

1952 (47) 2881; 1953 (48) 16.

I. GENERAL CONSIDERATION

Effect of amendment.—The amendment added the above proviso at the end of this section. The rest of the section was not

changed, and is therefore not set out.

Applied in *State v. Castleman*, 219 S. C. 136, 64 S. E. (2d) 250 (1951).

§ 22. Trial by jury; jury in inferior courts; grand jury.

I. GENERAL CONSIDERATION.

Statute providing for appointment of alternate jurors is valid.—Section 38-76, which grants to the presiding judge, where a trial is likely to be a protracted one, the right to direct the calling of one or two additional jurors in his discretion, to be known as alternate jurors, does not violate this section. *State v. McIntire*, 221 S. C. 504, 71 S. E. (2d) 410 (1952).

In accord with paragraph under this catchline in Code. See *State v. Waitus*, 224 S. C. 12, 77 S. E. (2d) 256 (1953).

III. DISQUALIFICATION OF JURORS.

Registered elector who fails to vote not ineligible.—Every registered male elector is a potential and duly qualified juror, and his name may be taken from the registration books by the jury commissioners. The fact that he fails to vote does not make him ineligible for jury duty. *State v. Waitus*, 224 S. C. 12, 77 S. E. (2d) 256 (1953).

II. GRAND JURY.

"Qualified elector" means "registered elector."

§ 25. Powers at chambers.

Cited in *Ex parte Orr*, 110 F. Supp, 153 (1952).

§ 26. Charge to juries.

V. DUTIES OF JUDGE.

By failure to request instructions.

In accord with paragraph under this catchline in Code. See *State v. Jamison*, 221 S. C. 312, 70 S. E. (2d) 342 (1952).

Add under "homicide" under this heading in Code: *State v. Fuller*, Westbrook Advance Sheets, No. 16899, filed Aug. 4, 1954.

VI. CHARGES NOT CONTRAVENING SECTION.

VII. CHARGES CONTRAVENING SECTION.

Charges were held not to contravene this section in cases treating the following subjects.—

Charges were held to violate this section, etc.

Add under this catchline in Code: burglary, *State v. Clamp*, 225 S. C. 89, 80 S. E. (2d) 918 (1954).

Negligence, *Jeff Hunt Machinery Co. v. South Carolina State Highway Dept.*, 219 S. C. 340, 65 S. E. (2d) 260 (1951).

§ 27. Clerk of court.

Cited in *Brown v. Moseley*, 222 S. C. 1, 71 S. E. (2d) 591 (1952).

the existing lack of uniformity in this respect among the counties. *Brown v. Moseley*, 222 S. C. 1, 71 S. E. (2d) 591 (1952).

§ 30. Sheriff and coroner.

Legislature may fix time, etc.

The present Constitution does not specify a beginning election year for the four-year terms of sheriff. That was left to the General Assembly, doubtless because of

Quoted in *Jackson v. White*, 218 S. C. 311, 62 S. E. (2d) 776 (1950).

ARTICLE VI.

JURISPRUDENCE.

§ 5. Codification of laws.

Cited in *Brown v. Moseley*, 222 S. C. 1, 71 S. E. (2d) 591 (1952).

ARTICLE VII.

COUNTIES AND COUNTY GOVERNMENT.

§ 1. Formation of new counties; county seats and name.

Governor alone determines compliance, etc.

And may grant or refuse amendment, etc.

In accord with paragraph under this catchline in Code. See *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

In accord with paragraph under this catchline in Code. See *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

§ 2. Section of old county to be cut off.

Legislature determines compliance with constitutional requirements.—The legislature itself is charged with the duty of determining whether the constitutional requirements in respect to annexation or the creation of a new county have been com-

plied with, and thus its determination of those facts cannot be assailed by evidence aliunde the record. *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

§ 4. Area, taxable property and inhabitants of old county.

The word "area" as used in this section includes marsh lands. *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

Lands merely owned and occupied by the Federal government would not reduce the area of a county within the meaning of the constitutional provisions. *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

Governor determines whether sufficient

area will remain.—For the purpose of ordering the election provided in § 1 of this article it is the Governor's prerogative to determine the question whether sufficient area will remain in the reduced county to satisfy the requirement of this section. *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

Evidence as to area. — See *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. (2d) 421 (1951).

§ 11. Townships; body corporate; township government.

I. GENERAL CONSIDERATION.

Section must be harmonized with Article 8.—The powers vested in the General Assembly by this section to provide for township government and to make special provision for municipal government

must be considered and harmonized with Article 8 of the Constitution, relating to the organization and government of towns and cities. *Wagner v. Smith*, 221 S. C. 438, 71 S. E. (2d) 1 (1952).

ARTICLE VIII.

MUNICIPAL CORPORATIONS AND POLICE REGULATIONS.

§ 1. Organization and classification of municipal corporations.

II. APPLICATION OF SECTION.

A. Acts Contravening Section.

Act denying to particular municipality right to operate municipal gas system.—See *Welling v. Clinton Newberry Natural Gas Authority*, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

B. Acts Not Contravening Section.

Section 47-105, excepting islands from the provisions of the general law as to

maximum corporate limits of towns having less than one thousand inhabitants, does not violate this section. *Wagner v. Smith*, 221 S. C. 438, 71 S. E. (2d) 1 (1952).

Act not denying municipalities' right to operate municipal gas systems.—See *Welling v. Clinton Newberry Natural Gas Authority*, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

§ 2. Electors must consent to organization.

An unrevised registration list is not conclusive of the number of electors residing and entitled to vote within the district proposed to be incorporated. *Wag-*

ner v. Smith, 221 S. C. 438, 71 S. E. (2d) 1 (1952).

Cited in *Wagner v. Johnson*, 223 S. C. 470, 76 S. E. (2d) 611 (1953).

§ 3. Taxes.

The establishment of a municipal airport is for "public purpose" within the

meaning of this section. *Evatt v. Cass*, 217 S. C. 62, 59 S. E. (2d) 638 (1950).

§ 4. Street railway, etc.

Cited in *DeTreville v. Groover*, 219 S. C. 313, 65 S. E. (2d) 232 (1951).

§ 5. Waterworks systems; plants furnish lights and ice.

I. GENERAL CONSIDERATION.

Applied in *Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. (2d) 361 (1953).

Stated in *DeTreville v. Groover*, 219 S. C. 313, 65 S. E. (2d) 232 (1951).

II. APPLICATION OF SECTION.

This section is not applicable to a natural gas system designed to furnish heating facilities. *Welling v. Clinton Newberry Natural Gas Authority*, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

§ 6. Corporate taxes must be uniform; license taxes.**II. POWER TO TAX.**

Evatte v. Cass, 217 S. C. 62, 59 S. E. (2d) 638 (1950).

Establishment and maintenance of a public airport is a corporate purpose.

§ 7. Bonded debt; certificates of indebtedness; sinking fund; refunding bonded debt; provisos as to certain cities added by amendment.**I. GENERAL CONSIDERATION.**

S. E. (2d) 638 (1950), as to amendment relating to Orangeburg.

Cited in *Evatte v. Cass*, 217 S. C. 62, 59

§ 8. Manufactories may be exempt from taxation.

Manufactories may be exempted from taxation.—Legislature may exempt from levy of all or any portion of county taxes the properties of manufacturers located in county where taxes are levied. West

Virginia Pulp & Paper Co. v. Riddock, S. C. . . . , 82 S. E. (2d) 189 (1954).

Quoted in *Arkwright Mills v. Murph*, 219 S. C. 438, 65 S. E. (2d) 665 (1951).

ARTICLE IX.**CORPORATIONS.****§ 7. Consolidation of stock with competing line; jury may decide whether lines are parallel or competing.**

Cited in *Romanus v. Biggs*, 217 S. C. 77, 59 S. E. (2d) 645 (1950).

§ 9. Banks.

Quoted in *Floyd v. Thornton*, 220 S. C. 414, 68 S. E. (2d) 334 (1951).

§ 13. Trusts, combinations, etc.

An act creating a natural gas authority to construct, maintain and operate a gas distribution system serving a specified area, and providing that no municipality or other public authority or body shall operate a competing system within this

service area, does not give the authority a monopoly in violation of this section. *Welling v. Clinton Newberry Natural Gas Authority*, 221 S. C. 417, 71 S. E. (2d) 7 (1952).

ARTICLE X.**FINANCE AND TAXATION.****§ 1. Taxation and assessment.****I. GENERAL CONSIDERATION.**

Stated in *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

Quoted in *Nesbitt v. Gettys*, 219 S. C. 221, 64 S. E. (2d) 651 (1951).

Cited in *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

III. GRADUATED LICENSE TAX.**A. In General.**

Provision is permissive.—The constitutional word "may" as used in the provision of this section authorizing a graduated income tax and license tax is permissive or advisory, and the legislature is not restricted at all to graduation in such cases. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

B. Application.

The "chain store" tax levied by § 65-1382 does not violate this section. *State v.*

Byrnes, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

IV. PROPERTY EXEMPT FROM TAXATION.**A. In General.**

It is well settled in South Carolina that the power to prescribe what property shall be taxed implies the power to prescribe what property shall be exempt from taxation, and that in the absence of a constitutional provision to the contrary, the Legislature may exempt such classes of property as in its opinion the public policy of the State requires. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

B. Application.

Exemption of rural electric cooperatives from taxation constitutional.—Exemption of rural electric cooperatives from taxation does not violate the provisions as to uniformity of taxation contained in this sec-

tion or Art. 10, § 5, of the State Constitution or the due process or the equal protection clauses of the 14th Amendment to the Federal Constitution. *Byrd v. Blue*

§ 2. Expenses of State government.

I. GENERAL CONSIDERATION.

Section inapplicable to capital outlays.—This section expressly refers to “ordinary expenses of the State” and can have nothing

Ridge Rural Electrical Cooperative, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

ing to do with capital outlays for permanent improvements. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

§ 3. Tax shall be levied in pursuance of law.

II. ACTS NOT VIOLATING SECTION.

The General Appropriation Act of 1951, which provides, among other things, for financing a school construction program by authorizing the issuance of general obligation bonds of the State, and for a general retail sales tax and the pledge of sufficient revenue therefrom to retire the bonds authorized in the act, does not violate this section in that surplus from the

revenue provided by the act, after payment of the principal and interest of the school bonds and payment of overplus into the school fund, is unallocated. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

Acts authorizing taxes to retire bonded indebtedness in school districts, and for operation of schools.—*Smith v. Lexington School Dist. No. 1*, 219 S. C. 191, 64 S. E. (2d) 534 (1951).

§ 4. Property exempt from taxation.

It is well settled in South Carolina that the power to prescribe what property shall be taxed implies the power to prescribe what property shall be exempt from taxation, and that in the absence of a constitutional provision to the contrary, the Legislature may exempt such classes of

property as in its opinion the public policy of the State requires. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

Stated in *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

§ 5. Taxes may be levied for corporate purposes; shares of stockholders; limit of bonded debt.

Provided, that the limitations as to bonded indebtedness imposed by this section shall not apply to Lockhart School District in Union County, and that Lockhart School District in Union County may incur bonded indebtedness to an amount not exceeding twenty-four (24%) per cent of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness now outstanding or hereafter created of any municipal corporation or political subdivision located wholly or partly within said district.

1950 (46) 3576; 1952 (47) 1876.

Provided, further, that the limitations imposed by this section shall not apply to Kershaw County and such county is authorized to incur bonded indebtedness to an amount not exceeding twenty per centum of the assessed value of all of the taxable property therein.

1952 (47) 2615; 1953 (48) 325.

Effect of amendments.—The 1952 amendment added the proviso relating to Lockhart School District in Union County, and the 1953 amendment added the proviso relating to Kershaw County, at the end of this section. The rest of the section was not changed, and is therefore not set out.

I. GENERAL CONSIDERATION.

Cited in *Briggs v. Elliott*, 103 F. Supp. 920 (1952).

II. POWER TO TAX.

Exemption of rural electric cooperatives from taxation constitutional.—Exemption of rural electric cooperatives from taxa-

tion does not violate the provisions as to uniformity of taxation contained in this section or Art. 10, § 1, of the State Constitution or the due process or the equal protection clauses of the 14th Amendment to the Federal Constitution. *Byrd v. Blue Ridge Rural Electrical Cooperative*, 215 F. (2d) 542 (1954), reversing 118 F. Supp. 868.

IV. BONDS FOR CORPORATE PURPOSES.

Establishment and maintenance of a public airport is a corporate purpose. *Evatt v. Cass*, 217 S. C. 62, 59 S. E. (2d) 638 (1950).

Public hospital is corporate purpose.—Hospital being a needed public facility, and since erection, maintenance and operation of hospitals by the State and its subdivisions has long been an approved and common activity, an act, (48 Stat. 692), authorizing Anderson County to issue bonds for hospital facilities is within this section. *Bolt v. Cobb*, ... S. C., 82 S. E. (2d) 789 (1954).

§ 6. Credit of State; for what purposes tax levied or bonds issued; provisos.

I. GENERAL CONSIDERATION.

The limitation imposed by this section does not apply to municipalities. *Evatte v. Cass*, 217 S. C. 62, 59 S. E. (2d) 638 (1950).

III. PURPOSES FOR WHICH COUNTY AND TOWN BONDS ISSUED.

The word "roads," as used in this section, includes such municipal streets as form an integral part of the county highways and are used by the people of the county at large or a substantial portion thereof. Stated differently, it includes such streets as subserve both a county and a municipal purpose. *Leonard v. Talbert*, 222 S. C. 79, 71 S. E. (2d) 603 (1952).

Undertaking must come within this section.—However public the purpose, county taxes may not be levied or county bonds issued for an undertaking which does not come within the purposes set forth in this section. *Leonard v. Talbert*, ... S. C., 83 S. E. (2d) 201 (1954).

Public hospital is corporate purpose.—Hospital being a needed public facility, and since erection, maintenance and operation of hospitals by the State and its subdivisions has long been an approved public facility, an Act, (48 Stat. 692), authorizing Anderson County to issue bonds for hospital facilities is within this section. *Bolt v. Cobb*, ... S. C., 82 S. E. (2d) 789 (1954).

§ 7. Scrip, certificate, or evidence of State debt.

Section inapplicable to State bonded debt.—This provision is a fragment of an article of the antecedent Constitution of 1868, inserted in the Constitution of 1895

§ 9. Money.

Quoted in *Beacham v. Greenville County*, 218 S. C. 181, 62 S. E. (2d) 92 (1950).

§ 11. Public debt; State bonds.

II. WHERE SECTION NOT VIOLATED.

Where special fund is ample for payment thereof.

In accord with paragraph under this catchline in Code. See *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951);

V. LIMITATION ON BONDED DEBT.

County and school district are separately subject to debt limitation.—A county and a consolidated school district comprising all the area in the county are separate and distinct corporate entities of coincidental and coextensive areas, and are separately subject to the constitutional debt limitation. *Tindall v. Byars*, 217 S. C. 1, 59 S. E. (2d) 337 (1950).

IV. ACTS NOT VIOLATING SECTION.

Act pledging revenue from sales tax to retire school bonds.—An act providing for the issuance of general obligation bonds of the State to finance a program of construction of school buildings and other school facilities and enacting a retail sales and use tax and pledging the revenue derived therefrom to retire the bonds does not lend or pledge the credit of the State for the benefit of any individual, company, association or corporation in violation of this section. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

V. ACTS VIOLATING SECTION.

Act providing for construction of recreational facilities.—An act providing for issuance of bonds for physical education, and construction of recreational facilities for use of school children particularly during summer vacations and of other members of public in furtherance thereof, does not come within the purposes set forth in this section, the undertaking being neither an educational nor an ordinary county purpose, but plainly a recreational purpose which could not have been within the intent of the framers of the Constitution. *Leonard v. Talbert*, ... S. C., 83 S. E. (2d) 201 (1954).

without its context, on which account it is generally considered inapplicable to the State bonded debt. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

Arthur v. Byrnes, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

Sufficiency of special fund is judicial question.—The question of the sufficiency of the special fund is in the nature of a judicial function, and while it may be delegated to executive and administrative offi-

cers under the Constitution, their conclusion is subject to court review and reversal in proper cases. *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

And Supreme Court may fix proper coverage.—In determining the validity of the proposed bonds, the Supreme Court is not confined solely to the margin provided in the act, but may fix what it considers to be a proper coverage and sustain the validity of the bonds to the extent permitted by the coverage so fixed. *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

The phrase "reasonably sufficient" should be construed as meaning that the special

fund or revenue pledged will with reasonably anticipated certainty be sufficient to pay the principal and interest of such obligations. *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

III. VIOLATIONS OF SECTION.

Only excess over debt limit declared invalid.—Where the total amount of bonds authorized exceeds the constitutional debt limitation, but a portion of same is within such limit, only the excess will be declared invalid. *Arthur v. Byrnes*, 224 S. C. 51, 77 S. E. (2d) 311 (1953).

ARTICLE XI.

EDUCATION.

§ 1. Superintendent of Education.

Cited in *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

§ 2. State Board of Education.

Cited in *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

§ 3. School officers.

General Assembly may prescribe qualifications for office.—Notwithstanding the provisions of S. C. Const., Art. 2, § 2, and Art. 1, § 10, that every qualified elector shall be eligible for public office, it was intended by this section that the General Assembly should be vested with the power to prescribe other qualifications for the office of school trustees. *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

But qualifications may not be arbitrary.—The qualifications fixed for the office of school trustee may not be arbitrary, they must be reasonable and based upon substantial grounds which are natural and inherent in the subject matter of the legislation, and the rights shall belong equally to each member of the class created by

such qualifications. *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

Act giving unreasonably preferential status to women candidates invalid.—An act providing that, of nine trustees of a consolidated school district, not less than three should be women electors, and that in the election of said trustees, the three women candidates receiving the largest number of votes cast for the women candidates should be declared elected, and the six other candidates who should receive the highest number of votes, whether men or women electors, should be declared elected, was unconstitutional as giving, without reasonable basis, a preferential status to women candidates. *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

§ 5. Free public schools; school districts.

Repealed by A. & J. R. 1952 (47) 2223 and A. & J. R. 1954 (48) 1695.

Purpose of section.—The obvious purpose of this section was to give all the children of the State an opportunity to attend free public schools. *Powers v. State Educational Finance Comm.*, 222 S. C. 433, 73 S. E. (2d) 456 (1952).

This section should be liberally construed. *Powers v. State Educational Finance Comm.*, 222 S. C. 433, 73 S. E. (2d) 456 (1952).

Section does not fix number of schools for county.

In accord with paragraph under this catchline in Code. See *Smith v. Lexington School Dist. No. 1*, 219 S. C. 191, 64 S. E. (2d) 534 (1951).

Under this section the General Assembly may authorize the formation of a school district embracing territory situated in two or more counties. It may authorize the consolidation of school districts lying in different counties. It may authorize the annexation of territory in one county to an adjoining school district in another county. It may create, or authorize the creation of, a district comprising the whole of one county and part of an adjacent county. *Powers v. State Educational Finance Comm.*, 222 S. C. 433, 73 S. E. (2d) 456 (1952).

For cases construing this section as it stood before the 1951 amendment, which

eliminated a former limitation upon the area of school districts and a number of provisos exempting particular counties from the operation of such limitation, see *Tindall v. Byars*, 217 S. C. 1, 59 S. E. (2d) 337 (1950); *Smith v. Lexington School Dist. No. 1*, 219 S. C. 191, 64 S. E. (2d) 534 (1951).

Quoted in *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951); *Briggs v. Elliott*, 98 F. Supp. 529 (1951), dis op. of *Waring, D. J.*

Cited in *Nesbitt v. Gettys*, 219 S. C. 221, 644 S. E. (2d) 651 (1951).

§ 6. Enrollment; trustees; poll tax; supplementary tax.

The effect of this section and S. C. Const., Art. 11, § 12, is not to confine the State's financial support of the public schools to the proceeds of the poll tax and the tax upon the sale, or license for the sale, of intoxicating liquors or beverages. *State v. Byrnes*, 219 S. C. 485, 66 S. E.

(2d) 33 (1951).

Act not violating section.—See *Smith v. Lexington School Dist. No. 1*, 219 S. C. 191, 64 S. E. (2d) 534 (1951).

Quoted in *Lee v. Clark*, 224 S. C. 138, 77 S. E. (2d) 485 (1953).

§ 7. Separate schools.

Segregation not violative of United States Constitution.—If equal facilities are offered, segregation of the races in public schools as prescribed by the Constitution and laws of South Carolina is not of itself violative of the Fourteenth Amendment to the United States Constitution. *Briggs v. Elliott*, 98 F. Supp. 529 (1951). See *Briggs v. Elliott*, 103 F. Supp. 920 (1952); *Briggs v. Elliott*, 342 U. S. 350, 72 S. Ct. 327, 96 L. Ed. 392 (1952).

Segregation violative of United States Constitution.—Segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive negro children of equal educational opportunities, in violation of the Fourteenth Amendment to the U. S. Constitution. *Brown v. Board of Education of Topeka*, ... U. S. ..., 74 S. Ct. 686, ... L. Ed. ..., (1954).

§ 8. Clemson Agricultural College; South Carolina School for the Deaf and Blind; University of South Carolina; Winthrop Normal and Industrial College; Colored Normal, Industrial, Agricultural and Mechanical College.

Editor's Note.—A. & J. R. 1954 (48) 1722 changed name of Colored Normal, Industrial, Agricultural and Mechanical Col-

lege of South Carolina to South Carolina State College.

§ 9. Property or credit of State shall not benefit sectarian institutions.

Cited in *Bolt v. Cobb*, ... S. C. ..., 82 S. E. (2d) 789 (1954).

the tax upon the sale, or license for the sale, of intoxicating liquors or beverages. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

§ 12. Income from sale or license for sale of liquors.

The effect of this section and S. C. Const., Art. 11, § 6, is not to confine the State's financial support of the public schools to the proceeds of the poll tax and

the tax upon the sale, or license for the sale, of intoxicating liquors or beverages. *State v. Byrnes*, 219 S. C. 485, 66 S. E. (2d) 33 (1951).

ARTICLE XVII.

MISCELLANEOUS MATTERS.

§ 3. Divorces.

Cross reference.—See notes to §§ 20-101 et seq.

Applied in *Thomas v. Thomas*, 218 S. C. 235, 62 S. E. (2d) 307 (1950); *Machado v.*

Machado, 220 S. C. 90, 66 S. E. (2d) 629 (1951).

Quoted in *Mincey v. Mincey*, 224 S. C. 520, 80 S. E. (2d) 123 (1954).

§ 9. Property of married women.

II. APPLICATION OF SECTION.

The estate of tenancy by the entirety no longer exists in South Carolina. *Davis v.*

Davis, 223 S. C. 182, 75 S. E. (2d) 46 (1953).

CONSTITUTION OF THE STATE OF SOUTH CAROLINA

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 - bonded indebtedness
 - limit on, Art 10, § 5
- Orangeburg County Court—
 - jurisdiction, Art 5, § 1
- Schools and School Districts—
 - Districts, division of counties into, re-
pealed, Art 11, § 5
 - free public school,
repealed, Art 11, § 5
- Union County—
 - Lockhart School District
 - bonds
 - permissible amount, Art 10, § 5

Rules of Practice for the Circuit Courts of South Carolina

27

Motions for continuance.

Applied in *State v. Goodson*, ___ S. C. ___, 82 S. E. (2d) 804 (1954).

Cited in *Cooley v. Cooley*, 222 S. C. 513, 73 S. E. (2d) 712 (1952).

28

Issues in equity causes—how tried by jury.

Applied in *Center v. Vaughan*, 217 S. C. 31, 59 S. E. (2d) 491 (1950).

Atlantic Coast Line R. Co., 222 S. C. 93, 71 S. E. (2d) 893 (1952).

Cited in *Standard Warehouse Co. v.*

29

Calling plaintiff submitting to nonsuit.

Stated in *Wildhagen v. Ayers*, ___ S. C. ___, 82 S. E. (2d) 609 (1954).

30

Submitting to nonsuit or dismissal before a master or referee—Form of master's or referee's report.

First paragraph stated in *Wildhagen v. Ayers*, ___ S. C. ___, 82 S. E. (2d) 609 (1954).

36

Surveys—how made when ordered by the court—notice of.

Cited in *Little v. Little*, 223 S. C. 322, 75 S. E. (2d) 871 (1953).

49

Mode of preparing a case on appeal.

Where there is disagreement as to what occurred at trial, the statement of trial judge in settling case as to what transpired is final and not subject to review by Supreme Court. *State v. Sessions*, 25 S. C. 177, 81 S. E. (2d) 287 (1954).

Applied in *St. Andrews Evangelical Lutheran Church v. St. Andrews Evangelical Lutheran Church*, 223 S. C. 9, 73 S. E. (2d) 845 (1952).

Cited in *State v. Cottingham (S. C.)*, 77 S. E. (2d) 897 (1953).

50

Case—how waived and what deemed settled.

Cited in *State v. Cottingham*, 224 S. C. 433, 77 S. E. (2d) 897 (1953).

54

Requisites for obtaining order for partition.

The complaint in a suit for partition need not contain an allegation that the parties to the action own no other land in

common. *Cooley v. Cooley*, 222 S. C. 513, 73 S. E. (2d) 712 (1952).

56

How questions brought before court.

This rule relates to the issuance of an order to show cause by way of substituting for a notice of motion, and is used when there is a special reason for a hearing in less than four days, and the purpose of the required affidavit is to show the existing

status of the action. *Langford v. State Board of Fisheries*, 217 S. C. 118, 60 S. E. (2d) 59 (1950).

Cited in *State v. Cottingham*, 224 S. C. 433, 77 S. E. (2d) 897 (1953).

59

Costs of former suits.

Stated in *Wildhagen v. Ayers*, ___ S. C. ___, 82 S. E. (2d) 609 (1954).

76

Objections for want of evidence—remedies.**I. GENERAL CONSIDERATION.**

Especially where defendant's liberty is involved.

In accord with 3rd paragraph under this catchline in Code. See *State v. Parler*, 217 S. C. 24, 59 S. E. (2d) 489 (1950); *State v. Blackwell*, 220 S. C. 342, 67 S. E. (2d) 684 (1951); *State v. Thompkins*, 220 S. C. 523, 68 S. E. (2d) 465 (1951); *State v. Center*, 223 S. C. 484, 76 S. E. (2d) 669 (1953).

The Supreme Court has frequently disregarded this rule in appeals from criminal convictions. But not always so. *State v. Miller*, 223 S. C. 128, 74 S. E. (2d) 582 (1953).

Motion in criminal case should be made at close of all evidence.—The motion for a directed verdict in favor of defendant in a criminal case should be made at the close of all the evidence—that offered by the State and that offered by the defense. *State v. Parler*, 217 S. C. 24, 59 S. E. (2d) 489 (1950).

II. APPLICATION OF SECTION.**Questions may not first be made, etc.**

In accord with paragraph under this catchline in Code. See *Munn v. Asseff*, *Westbrook Advance Sheets*, No. 16909, filed Sept. 14, 1954.

Failure to make motion, etc.

In accord with 1st paragraph under this catchline in Code. See *Cartwright v. Herald Pub. Co.*, 220 S. C. 492, 68 S. E. (2d) 415 (1951); *State v. Miller*, 223 S. C. 128, 74 S. E. (2d) 582 (1953); *State v. Howell*, 224 S. C. 277, 78 S. E. (2d) 579 (1953).

Failure to include contributory negligence as ground of motion.—Where defendant at the close of the evidence moves for the direction of verdict in his favor but does not include as a ground contributory negligence, which was pleaded in the answer, it goes out of the case on appeal. *Morrow v. Evans*, 223 S. C. 288, 75 S. E. (2d) 598 (1953).

Cited in *State v. Orr*, --- S. C. ---, 82 S. E. (2d) 523 (1954).

79

Motion non obstante veredicto—motion for new trial.

A motion for judgment notwithstanding the verdict goes back to the point in the trial when a motion was made for a directed verdict, and is limited to those

grounds. *Standard Warehouse Co. v. Atlantic Coast Line R. Co.*, 222 S. C. 93, 71 S. E. (2d) 893 (1952).

Rules of the Supreme Court of South Carolina

Rule 1

Return; docketing and remittitur fees

This rule is independent of, and additional to, the statutes and circuit court rules. *State v. Cottingham*, 224 S. C. 181, 77 S. E. (2d) 897 (1953).

It puts the burden on appellant to file the transcript of record. *Herring v. Lawrence Warehouse Co.*, 222 S. C. 226, 72 S. E. (2d) 453 (1952).

And this includes parts of record made necessary by additional sustaining grounds.—Appellant is required to include not only that portion of the record which he desires, but also such portions thereof as are made necessary by the additional sustaining grounds authorized by § 7 of Rule 4. *Herring v. Lawrence Warehouse Co.*, 222 S. C. 226, 72 S. E. (2d) 453 (1952).

Proof of failure to file transcript of record.—Only this rule refers to the certificate of the clerk. Such a certificate is not required by the statutes as proof of failure of filing of the transcript of record. It is convenient and conclusive and therefore in

common use; it also has the additional virtue of thereafter preventing effective filing after time. But it is not required of a respondent who moves under the statutes. The fact that the transcript has not been filed may be proved otherwise in the lower court, or admitted. *State v. Cottingham*, 224 S. C. 181, 77 S. E. (2d) 897 (1953).

Four days' notice of motion to dismiss appeal required.—The old form of this rule required ten days' notice of motion before the clerk to dismiss an appeal. There is no such requirement in the present form of the rule, which authorizes motion before, and order of dismissal by, the lower court. However, *Horger v. Sims*, 131 S. C. 117, 126 S. E. 430 (1925), decided under applicable statutes which were carried forward in the Code of 1952, leaves no doubt of the necessity of at least four days' notice—not ten days. *State v. Cottingham*, 224 S. C. 181, 77 S. E. (2d) 897 (1953).

Rule 4

Contents of transcript of record

Section 3.

Entry of judgment not required.—This section provides that the "nature of the order of judgment appealed from" should be set forth, but the rule does not provide that the entry of the judgment is required.

Section 6.

Every ground of appeal ought to be so distinctly stated that the courts may at once see the point which it is called upon to decide without having to "grope in the dark" to ascertain the precise point at issue. *Brady v. Brady*, 222 S. C. 242, 72 S. E. (2d) 193 (1952).

Exceptions should not be unnecessarily numerous.—Exceptions should not only not be long or argumentative, but they should not be unnecessarily numerous. *Richards v. Great Atlantic & Pacific Tea Co.*, Westbrook Advance Sheets, No. 16916, filed October 4, 1954.

Section 7.

Disagreement as to what occurred at trial.—Where there is disagreement as to what occurred at trial, the statement of trial judge in settling case as to what transpired is final and not subject to review by Supreme Court. *State v. Sessions*, 225 S. C. 177, 81 S. E. (2d) 287 (1954).

Parties bound by order of settlement in absence of appeal.—Where the transcript

McCants v. West Virginia Pulp, etc., Co. (S. C.), 76 S. E. (2d) 614 (1953).

Applied in *Maxey v. Manning*, 224 S. C. 320, 78 S. E. (2d) 633 (1953).

Consideration of exception on waiver of breach of rule.

In accord with paragraph under this catchline in Code. See *Brady v. Brady*, 222 S. C. 242, 72 S. E. (2d) 193 (1952).

As to waiver of compliance with rule, as a matter of grace, see *Becker v. Uhe*, 221 S. C. 334, 70 S. E. (2d) 346 (1952).

Applied in *St. Andrews Evangelical Lutheran Church v. St. Andrews Evangelical Lutheran Church*, 223 S. C. 9, 73 S. E. (2d) 845 (1952).

Cited in *State v. Edwards*, 220 S. C. 373, 68 S. E. (2d) 346 (1951).

of record for appeal is settled by the trial judge by order under Rule 49 of the Circuit Court, and there is no appeal from this order of settlement of the record, the parties are bound by it, including the contents of the statement. *St. Andrews Evangelical Lutheran Church v. St. Andrews Evangelical Lutheran Church*, 223 S. C. 9, 73 S. E. (2d) 845 (1952).

Applied in *Fallon v. Rucks*, 217 S. C. 180, 60 S. E. (2d) 88 (1950); *Cason v. Gibson*, 217 S. C. 500, 61 S. E. (2d) 58 (1950); *McCullem v. Liberty Life Ins. Co.*, 217 S. C. 565, 61 S. E. (2d) 181 (1950); *Herring v. Lawrence Warehouse Co.*, 222 S. C. 226,

72 S. E. (2d) 453 (1952); in dissenting opinion *Stukes, A. J.*, in *Foster, Admx. v. Rulane Gas Co.*, *Westbrook Advance Sheets*, No. 16922 filed Nov. 1, 1954.
Cited in *Phillips v. Davis*, --- S. C. ---, 82 S. E. (2d) 515 (1954).

Section 8.

Applied in *Ramantanin v. Miller*, 225 S. C. 77, 80 S. E. (2d) 925 (1954).
Cited in *Hurst v. Donegal & Conoy*

Mut. Fire Ins. Co., 224 S. C. 188, 78 S. E. (2d) 189 (1953).

Rule 8

Briefs

Section 2.

As to waiver of rule as a matter of grace, see *Cooley v. Cooley*, 222 S. C. 513, 73 S. E. (2d) 712 (1952).

Cited in *Richards v. Great Atlantic & Pacific Tea Co.*, *Westbrook Advance Sheets*, No. 16916, filed October 4, 1954.

Section 4.

Applied in *Langford v. West Oakwood Cemetery Addition*, 223 S. C. 350, 75 S. E. (2d) 865 (1953).

Section 7.

Effect of noncompliance.—Where appellants' brief embodies numerous facts which do not appear in the transcript of record, in violation of this rule, which this breach of the rule is condemned, the appeal should not be dismissed, but the facts improperly stated in the brief will not be considered.

Becker v. Uhe, 221 S. C. 334, 70 S. E. (2d) 346 (1952).

Applied in *State v. Goodall*, 221 S. C. 175, 69 S. E. (2d) 915 (1952).

Cited in *State v. Orr*, --- S. C. ---, 82 S. E. (2d) 523 (1954).

Rule 24

Motions for new trials upon after-discovered evidence

Cited in *Bryan v. Bryan*, 109 F. Supp. 366 (1952).

Rule 27

Effect of sustaining appeal

Applied in *Kitchens v. Lee*, 221 S. C. 59, 69 S. E. (2d) 67 (1952); *Adair v. New*

York Life Ins. Co., 224 S. C. 344, 79 S. E. (2d) 316 (1953).

RULES AND REGULATIONS

Adopted under General and Permanent Laws of the State of South Carolina

FILED IN THE OFFICE OF SECRETARY OF STATE AS OF
OCTOBER 26, 1954.

Published Pursuant to § 1-17, S. C. Code 1952.

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Aeronautics Commission.

ADOPTED BY SOUTH CAROLINA AERONAUTICS COMMISSION.

Pursuant to § 2-55, S. C. Code of 1952.

Permit Required for Air Shows, Aerial Exhibitions, etc.

(Filed Secretary of State's office April 7, 1953.)

1. No person, firm, or corporation shall promote, sponsor, conduct, or cause to be displayed any aerial exhibition or air show on any airport within this state without an effective, current permit issued by the South Carolina Aeronautics Commission. Applications for permits must be filed with the South Carolina Aeronautics Commission at least ten (10) days prior to the scheduled date of proposed aerial exhibition or air show.

2. The South Carolina Aeronautics Commission shall furnish appropriate forms for application for waiver or permit without charge to the applicant.

Registration of Spraying, Dusting and Seeding Aircraft.

(Filed Secretary of State's office April 7, 1953.)

1. No person piloting an aircraft shall engage in aerial spraying, dusting, seeding, or any similar operation within this state unless the aircraft being used shall have first been properly registered by the South Carolina Aeronautics Commission, which registration shall be issued without charge to applicant on appropriate forms to be furnished by the South Carolina Aeronautics Commission.

2. Prior to the issuance of a registration certificate by the South Carolina Aeronautics Commission the applicant must, under oath, certify that the aircraft which will be engaged in the operation of spraying, dusting, seeding, or any other agricultural operation or pest control shall be equipped with approved type safety belt and shoulder harness, provided further that the operator of the aircraft shall, at all times, wear the approved safety belt and shoulder

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harness while the aircraft is engaged in the operation of aerial dusting, spraying, seeding, or any other type of agricultural operation or pest control.

Aerial Applicator Pilot Permit Regulations.

(Filed Secretary of State's Office June 20, 1953.)

1. It shall be unlawful for any person to pilot an aircraft while engaged in aerial spraying, dusting, seeding, or any other similar operation within this state unless the pilot shall be the holder of a valid current permit issued by the South Carolina Aeronautics Commission to engage in the above named operations.

2. Pilot Qualifications:

(a) Applicant pilot must hold a current, effective Commercial Airman Certificate with a minimum of three hundred (300) logged hours, twenty-five (25) hours of which must have been logged while engaged in aerial application.

(b) If the applicant pilot does not possess the qualifications, as outlined in paragraph (a) of this regulation as to aerial application experience, the applicant must in order to qualify for this permit, receive the minimum twenty-five (25) hours under the direct supervision of an aerial applicator who holds an effective, current permit issued by the South Carolina Aeronautics Commission, provided further, that the applicant pilot must produce written evidence signed by the supervising aerial applicator, which statement must be sworn to by the applicator that the applicant pilot has received the minimum twenty-five (25) hours of aerial experience under his direct supervision, provided further, if the applicant pilot receives the twenty-five (25) hours minimum experience in aerial application without the state, the applicant pilot must produce documentary evidence sworn and subscribed to by the person who supervised this aerial applicator's training, which evidence must meet the complete satisfaction of the South Carolina Aeronautics Commission.

3. Permits:

(a) Permits will be issued beginning January 1st of each year, without charge to applicants, on appropriate forms to be furnished by the South Carolina Aeronautics Commission. This permit will be valid only for the calendar year on which issued, expiring December 31st of each year, unless otherwise revoked for cause as determined by the South Carolina Aeronautics Commission.

4. (a) The South Carolina Aeronautics Commission may revoke or refuse to issue or re-issue any permit when in its opinion the issuance or re-issue shall not be in the public interest, public safety, or if the Commission finds as a fact that the licensee is no longer qualified.

5. (a) Upon notice of refusal to issue or re-issue a permit by the Commission, the licensee may request a hearing at any regular meeting of the Commission and/or by any person designated by the Commission to hold such hearing.

Registration of Aircraft.

(Filed Secretary of State's office May 14, 1953.)

Effective Date: This regulation shall be effective June 1, 1953.

1. Aircraft to Be Registered:

(a) It shall be unlawful for any person to operate or cause to be operated within this state, 30 days after entry into state, any civil aircraft based in this state unless such aircraft has an appropriate, effective license, certificate or permit issued by the United States of America, Department of Commerce, Civil Aeronautics Administration, which has been registered with the South Carolina Aeronautics Commission and such registration is in full force and effect. Provided, however, this registration does not apply to any public aircraft used exclusively in any governmental service or any scheduled air carrier that has been issued a certificate of Public Convenience and Necessity by the United States Civil Aeronautics Board or by any irregular air carrier granted Letter of Registration by the United States Civil Aeronautics Board, and does not apply to the aircraft exempted under Section 9 of this regulation.

(b) Based: As used in this regulation, an aircraft shall be considered based in the State of South Carolina:

- (1) if the aircraft is situate or operated within the state for a period exceeding thirty (30) days; or
- (2) if the owner's principal place of business or residence is within the state and the aircraft operates from that location.

2. Application for Registration:

The person or persons desiring registration shall file in the office of the South Carolina Aeronautics Commission an application for registration on the form required and supplied by the Commission, and the Commission may upon receipt of a proper application register such

RULES AND REGULATIONS

aircraft and issue a certificate of registration and assign it a registration number and also such stamp, decalomania, or sticker as it deems practicable, which shall be placed on the aircraft in a readily visible and readable location during its effective period.

3. Inspection, Certificate and Registration:

The certificate of registration must be presented for inspection upon the request of any authorized officer or employee of the Commission or upon the reasonable demand of any other person.

4. Withholding and Revocation of Certificate:

The Commission shall not grant a certificate of registration to any person who has not complied with this regulation and the Commission may revoke any such certificate which has been obtained by false or fraudulent representation and any certificate issued by the Commission shall be surrendered to the Commission on demand.

5. Expiration, Renewal, Duplicate Certificates:

The certificate of registration shall expire on December 31st of each year. The registration shall be renewed annually January 1 in the same manner as provided for in the original registration. In the event of loss or destruction of a certificate of registration or the stamp or other evidence thereof, a duplicate may be obtained from the Commission upon the filing of an affidavit explaining the loss.

6. Transfer of Registration:

Within ten days after the date of sale or transfer of title of a registered aircraft, the purchaser shall fill in the prescribed form on the back of the registration certificate giving his name and address, and the date and place of sale and forward the certificate to the offices of the Commission for re-issue in the purchaser's name; provided further, that in the event of the sale of an aircraft to a person without the state, the seller shall give notice of sale herein required.

7. Fees:

There shall be no fees or charges made for the application or the issue or re-issue of any certificate of registration or any stamp, decalomania or sticker issued under this regulation.

8. Destruction of Aircraft:

Upon the total destruction of any aircraft registered under this regulation by accident, fire, or other means, the person in whose name the aircraft is registered shall give written notice of such destruction to the Commission within ten days after said aircraft was destroyed.

9. Exemptions:

The provisions of this regulation shall not apply to:

- (1) any Public Aircraft, scheduled air carrier, or any large irregular air carrier.
- (2) any aircraft registered under the laws of a foreign country which grants similar exemption for aircraft of United States Registry in its territory.
- (3) any aircraft which is within this state for the purpose of repair or overhaul.

10. Hearings:

Any applicant for registration certificate, if such registration is denied or revoked by the South Carolina Aeronautics Commission, shall have the right to a hearing before the Commission.

Agriculture Commissioner.

ADOPTED BY THE SOUTH CAROLINA COMMISSIONER OF AGRICULTURE.

Pursuant to § 3-608, S. C. Code of 1952.

Concentrated Commercial Feedstuffs

(Filed in the office of the Secretary of State March 2, 1954.)

3. Adulterants.

Feeds cannot be adulterated with substances of little or no feed value, such as noxious weed seeds, rice straw, humus, spaghnum moss, ground coconut shell, peat, damaged or moldy grain, sawdust sweepings, dirt or any worthless or damaged ingredient.

Frozen Desserts.

Pursuant to § 32-1710, S. C. Code of 1952.

(Filed Secretary of State's office July 10, 1953.)

All manufacturers of Frozen Desserts obtaining a license from the Department of Agriculture shall post such license in a conspicuous place in their manufacturing establishment so as to be easily read by the public.

CODE OF LAWS OF SOUTH CAROLINA

Milk.

Pursuant to § 32-1609.7, S. C. Code of 1952.
(Filed Secretary of State's office August 28, 1952.)

b. Sampling milk and cream.

5. Composite samples must be held not less than 7 days or more than 16 days before being tested. Samples must be held for a maximum 10 days beyond the sampling period to permit check testing by inspectors.

Seeds.

Pursuant to § 3-402, S. C. Code of 1952.
(Filed Secretary of State's office June 11, 1953.)

1. Standard for Agricultural Seeds.

(b) Strike out paragraph (b) and insert in lieu thereof, the following:

(b) The germination standard for Dallis grass shall be 60%. Dallis grass showing less than 60% and above 39% in germination must be labeled "Below Standard in Germination". Dallis grass showing less than 40% cannot be sold in South Carolina.

4. Standard Germination for Vegetable Seeds.

(a) Strike out "Beans (except Lima) 75%" and insert in lieu thereof the following:

Beans, Garden (varieties other than Rival, Topcrop, and Logan)	75%
Beans, Garden (varieties Rival, Topcrop and Logan)	70%
Cress Garden	60%
Cress Water	40%

Agricultural Marketing Commission, State.

ADOPTED BY STATE AGRICULTURAL MARKETING COMMISSION OF SOUTH CAROLINA.

Operation of The Columbia State Farmers Market.

Pursuant to § 3-208, S. C. Code of 1952.

(Filed Secretary of State's office October 18, 1952.)

Section XXVII. It shall be unlawful for any person, firm or corporation to use, keep, or place any truck, tank or other container containing what is known as Ethylene Gas on the premises of the Columbia State Farmers Market, Columbia, South Carolina, and it shall be unlawful to use Ethylene Gas for the purpose of coloring fruits or vegetables or any like purpose in any building or on any of the premises of the Columbia State Farmers Market.

Revised Rules and Regulations with Amendments Governing the Operation of The Columbia State Farmers Market

(Filed Secretary of State's office August 14, 1954.)

Section I. The Market Manager or his Agent shall have the supervision and general control of the Market and the streets and alleys immediately adjoining, and shall collect all fees, rents, etc., and deliver to each lessee, buyer, or seller, as provided for herein, the required receipt or ticket for use while doing business on the Market grounds.

Section II. No person shall deface or damage the buildings, loading platforms, packing sheds, streets, or any other physical equipment of said Market other than that actually done while engaged in business.

Section III. It shall be unlawful for any person to sell or offer for sale on said Market until he or she has paid the required fee or rent, or has made satisfactory arrangements with Market Manager or his assistant.

Section IV. The Market Manager or duly authorized agent shall have the authority to direct the arrangement and movement of all vehicles on the Market.

Section V. The Market Manager shall have the authority to establish selling areas for South Carolina farmers and specific products at such times as may be necessary for orderly use of the Market, arrangement of parking and traffic control. In order for a farmer to be eligible to use said space for selling, he may be required, under oath, to specify that all the produce was grown on his farm and that it is being sold by himself, a member of his immediate family or a person who has had a working part in its production on the farm.

Section VI. Stall and parking space shall be rented either by the month or by the day. The rent shall be fixed by the Marketing Commission.

Section VII. No person renting a stall space on said Market shall sell, sublet or assign the same, or any part thereof, or shall use same for any purpose other than loading, unloading, displaying and selling farm products without the consent or approval of the Market Manager.

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Section VIII. Sharp and dishonest practices carried on at the Market will be punished by revocation of permit to sell on the Market.

Section IX. False packs are prohibited.

Section X. The use of profane, abusive, or discourteous language on the Market is prohibited, and is punishable by expulsion from the Market.

Section XI. The Market Manager, or his agent, shall have the authority to remove from the Market any person gambling or under the influence of intoxicants, or who is disorderly in his conduct.

Section XII. No Marketeer or vendor shall do any act or use any language, intended thereby to insult another tenant or customer or to intimidate a shopper into purchasing his produce, nor shall they attempt to fix the prices of produce of any farmer, or other vendor, or merchant, but every person shall sell his or her produce at whatever price they may adopt, unmolested.

Section XIII. Tenants, vendors or marketeers who circulate false reports of stories tending to upset, destroy or disturb the operation of the Market, or that may cause, upset or damage to other tenants in loss of prices, shall be subject to expulsion from the Market.

Section XIV. Any user of space on the Market, either under roof or in the open, must keep his immediate premises reasonably clean, sanitary and orderly. The Market Manager or his agent shall have the right to remove immediately from the Market grounds, any person violating this section.

Section XV. Any person, firm or corporation desiring to cancel any lease, with the State Marketing Commission must do so in writing. Such statement must be given to the Market Manager and include all information such as investment in permanent installations or the amount of money expected for remuneration of such installation.

Section XVI. Any person, firm or corporation desiring to lease warehouse units must file with the Market Manager a written request with the following information: name of person, partners or firm; products to be handled; number of years in produce business; name of the bank used. A deposit of three (3) months rent in advance must accompany the request for single units or one-half units. The amount of the deposit required for more than one unit shall be determined by the Marketing Commission. The Marketing Commission shall have the right to reject any and all requests. When requests are rejected, any deposit will be promptly refunded.

Section XVII. Tenants occupying space on a monthly basis are not allowed to rent any space at another location on the Market on a monthly basis except by special permission from the State Marketing Commission.

Section XVIII. Shed stalls that become empty of products for sale may be rented to other sellers.

Section XIX. All platforms, aisles and walkways must not be blocked at any time.

Section XX. Buyers must not approach any seller of produce until the seller has parked his vehicle on the Market grounds.

Section XXI. Sellers on the Market must not approach a buyer for the purpose of making a sale while said buyer is in conference with another seller.

Section XXII. All State and Federal Laws must be observed.

Section XXIII. The Market Manager and all other employees of the said Market shall not be interested either directly or indirectly in the purchasing, buying, or selling of any products sold on said Market.

Section XXIV. The Market or any of its employees shall not be responsible for any loss through theft or otherwise of products or any private property on the Market. The Market will not be responsible for personal injuries or damage to private property.

Section XXV. In case of violation of any of these rules and regulations, the Market Manager may revoke any privilege issued to any person under the terms of these rules and regulations and such revocation is for immediate effect. Any person who has been or who has had such privilege revoked shall be barred from the Market until he shall be reinstated. Any person whose privilege has been revoked by the Market Manager may appeal therefrom to the Marketing Commission. Said appeal must be made in writing within seventy-two (72) hours after the revocation and such appeal shall set forth in a concise manner the cause of the revocation and the reason for appealing. The Marketing Commission shall fix a time for hearing not less than one day or more than fifteen days after the appeal has been filed. After hearing such an appeal the Marketing Commission may affirm the revocation or reinstate the applicant and action of the Marketing Commission shall be conclusive and final.

Section XXVI. The use of Ethylene Gas for the purpose of coloring fruits or vegetables on the Columbia State Farmers Market is prohibited with the exception of small

size lecture bottles. It is urged that it be used in accordance with practices recommended by nationally known manufacturers and fruit ripening authorities.

Section XXVII. Until further notice the gates to the Columbia State Farmers Market will be closed to all vehicular traffic from midnight Saturday night until midnight Sunday night except in the following cases: trucks loaded with produce may make entrance from 5:00 a. m. to 9:00 a. m. and from 3:00 p. m. to 7:00 p. m.; fire fighting equipment, ambulances, physician's cars, ice trucks and emergency repair crew trucks or cars may make entrance or exit through the gates when necessary.

Section XXVIII. The foregoing rules and regulations are subject to change at any time upon the discretion of the Marketing Commission, and the posting of the said change.

POWER AND FORCE OF THESE RULES AND REGULATIONS. **Section 3-214 of the 1952 Code of Laws of the State of South Carolina, states:**

"Any person who shall, within the bounds of any market established under the provisions of articles 1, 2 or 3 of this chapter, violate any of the provisions hereof or any rule or regulation promulgated hereunder shall be guilty of a misdemeanor, punishable by a fine of not exceeding one hundred dollars (\$100.00) or imprisonment for not exceeding thirty days."

Cosmetic Art Examiners, State Board of.

ADOPTED BY THE SOUTH CAROLINA STATE BOARD OF COSMETIC ART EXAMINERS.

Pursuant to § 56-471, S. C. Code of 1952.

Curriculum and Rules for Recognized Schools and Colleges of Beauty Culture.

(Filed Secretary of State's office August 14, 1952.)

General Information:

The following is the approved curriculum for a course consisting of 1,000 hours or more governing schools and colleges of beauty culture in the State of South Carolina, approved by the South Carolina State Board of Cosmetic Art Examiners, the State Board of Education and the Educational Committee of the Registered Cosmetologist Association of South Carolina.

The office of the Board is available for information to any school or student concerning the requirements of this Board, as well as for information concerning the law.

This Board, in answering inquiries by prospective students, will submit a list of the approved schools only without comment.

No school or college of beauty culture shall operate within this State, until an inspection has been made and permission has been granted by the Board.

Teaching and Instructing Staff:

All teachers in schools or colleges of beauty culture must have at least a high school education, with two years' experience as a Registered Cosmetologist, and must have received at least three (3) semester hours in Methods of Teaching as prescribed by the State Board of Education and must have received training in advanced Cosmetology and in Hair Styling as approved by the State Board of Cosmetic Art Examiners.

All teachers must pass a teachers' examination as prescribed by the State Board of Cosmetic Art Examiners and must hold a Teacher's Certificate issued by the Board.

No student will be accepted for examination from schools where instructors' health certificates, certificates as registered cosmetologists and teacher's certificates are not up-to-date, in order, and in full force. No school of beauty culture shall be approved by this Board, that does not provide at least one instructor for the first twenty students, or fraction thereof; two instructors if the number of students enrolled in the school shall be more than twenty and less than thirty-five. If the number of students enrolled in the school shall exceed thirty-five, then one instructor for each twenty students enrolled shall be employed.

An instructor shall be in the study and classroom of a school during all class and study hours, and will be required to supervise all practice student work.

Every instructor in an approved school shall devote his or her entire time, during school or class hours, to that of instructing the students, and shall not apply her time to that of private or public practice for compensation, or permit students to instruct or teach co-students in the absence of a teacher.

The Board requires that a duly licensed physician must be on the consulting faculty of every school.

Registration:

Students must be registered with the Board on proper entry blanks, not later than ten (10) days after entering school. All enrollments must be accompanied by health certificates, a birth certificate, and proof of at least seventh grade education.

Limitations:

A beauty school is not permitted to operate as a beauty shop.

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No school or college of beauty culture shall be approved that does not maintain a regular schedule of at least six clock hours daily, at least five (5) days a week, as prescribed by the Board, and no school or college shall operate with less than an enrollment of six (6) regular students.

No school or college of beauty culture shall permit its students to practice beauty culture upon the public under any circumstances except by way of practice work upon persons willing to submit themselves to such practice after having first been properly informed that the operator is a student.

A sign to read, "SCHOOL OF BEAUTY CULTURE, WORK DONE EXCLUSIVELY BY STUDENTS", in letters large enough to be read the length of the room, is to be displayed in the reception room and workrooms.

No school or college of beauty culture shall, directly or indirectly, charge any money whatsoever for services rendered by its students, but may charge only for cost of supplies used. No school or college of beauty culture shall advertise in any way whatsoever except for students.

Practical performance and attendance records must be kept for each student. This record is to be posted daily from the "Students' Daily Reports".

All of these records must be kept up-to-date for checking by the State Board of Cosmetic Art Examiners or assistants and a duplicate must be filed each month with the Cosmetic Art Board.

Before graduation, it shall be the duty of each recognized school to give a final examination to every student who is a candidate for a diploma, and each student must make a passing grade of 75 or more. This grade, together with a practical performance and attendance record, with application for examination, must be filed with the Board, together with the required fees, ten (10) days before examination date, for permanent records.

Students failing the State Board Examination for two consecutive times are required to receive further training before attempting the examination for the third time. It shall be at the discretion of the Board as to the number of hours required, and students shall be so notified.

No permits shall be issued to students to practice for compensation although they have finished their course, until they have passed the apprentice examination before the Board, and received their certificates as a registered apprentice.

Advanced Training:

Any school offering advanced training in Cosmetology and Hair Styling must register with the Cosmetic Art Board and a course of study for such training shall be furnished the school by the Board. This class is to be operated entirely separate to the regular classes.

Curriculum:

Students are required to pass an examination based on the following suggested minimum hours:

Subject	Hours
Permanent Waving	230
Marcel Waving	25
Finger Waving	75
Pin Curling	80
Facials: Plain and Electric	40
Scalp	40
Cosmetic Chemistry	50
Eyebrow Arching	8
Manicuring	50
Hair Shaping	50
Shampoo	65
Rinses	10
Hair Dyeing	30
Hair Bleaching	10
Eyebrow and Eyelash Dyeing	10
Electricity	30
Sanitation—Disinfection—Hygiene	30
Theory	90
Lectures	15
Safety Measures	12
State Law	8
Ethics	12
Unassigned	30
TOTAL	1,000

We recommend that colored students complete at least eighty (80) hours in permanent waving and one hundred and fifty (150) hours in pressing.

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The above work shall be given to the students through practical demonstration and recitations. These recitation periods shall include lectures, questions, answers, and written examinations. All papers written shall be carefully graded and returned to the students in order that they may see their errors and a permanent record of these grades kept at all times by the schools.

Equipment:

(A) General Equipment:

No school will be approved by the Board, having less than the following equipment: Practice room equipment for 20 students, or less—number of pupils above 20 shall be furnished the same equipment in ratio of the equipment required for 20:

- 3 Shampoo bowls
- 3 Shampoo chairs
- 3 Hair dryers
- 12 Fingerwaving chairs
- 3 Manicure tables with chairs and lamps (6 chairs)
- 1 Facial chair and ottoman
- 3 Hair dryer chairs
- 6 Double vanities
- Marcel heaters
- 1 Wall plate
- 3 Towel containers with tops
- 1 Operator's stool
- 1 30 heater permanent wave machine complete with protectors and rods for six waves
- 1 Wet Sterilizer (sufficiently large to accommodate instruments used by 20 students)
- 1 Dry Cabinet (sufficiently large for tools and instruments for 20 students)
- 1 Dressing room with place for coats, hats and uniforms, with mirrors (approximately 10 feet by 8 feet)
- Desk and chair for teacher
- Settee and chairs for reception room
- Drinking fountain
- 4 Waste containers

Sufficient blocks with wefts of first quality hair for use in practicing marcelling, finger-waving, and permanent waving. These blocks to be placed on firm stands

(B) Study and Classroom Equipment:

A separate recitation and study room is required with the following equipment:

Sufficient charts, blackboards, to teach all subjects of beauty culture. Sufficient chairs preferably with arm rests for classroom work, such as taking notes.

Room shall be entirely separate from practice room.

(C) Dispensing Room Equipment:

Each school is required to furnish a supply or dispensing room in which each student may obtain actual experience, for a period of one to three weeks, as indicated by the course of instruction. The student will be directly responsible to the instructor.

Soap dispenser

Waste container

Record book, to be signed by the student on receiving supplies and on returning or accounting for same

Supply of clean linens, neck cloths and strips, etc.

Bottles and containers in use distinctly and correctly labeled

Cabinet for accessories

Measuring cups for preparation of solution from stock supplies

Various solutions and preparations used

Sanitation:

Sanitary rules and regulations applicable to beauty shops shall apply to beauty schools.

If a beauty school is located with some other business, separate rooms must be provided for beauty school work. Every school conducted in connection with a home shall provide a separate entrance to such school which shall not open from any living quarters of the house or any part of the house, other than the entrance to the building.

Reference Books for Course in Cosmetology:

Hair Dyes and Hair Bleaching

Authors—H. Stanley Redgrove and Gilbert A. Foam

Publisher—William Heinman, Chicago Medical Book Co., Chicago, Ill.

Creative Teaching

Author—F. Theodore Struck, Ph.D.

Publisher—John Wiley & Sons, Inc., New York, N. Y.

Types of Elementary Teaching and Learning

Author—Samuel Chester Parker

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Publisher—Ginn & Co., Atlanta, Ga.

Psychology and Life

Author—Floyd L. Ruch

Publisher—Scott Foresman & Co., Atlanta, Ga.

Text Book of Histology

Authors—Alexander H. Maximow and William Bloom

Publisher—W. B. Sanders Co., Philadelphia, Penn.

The Chemistry of Cosmetic Practice

Author—Francis Williams Howes, A.B., Ch., M.A., 10315 Campbell Ave., Chicago, Illinois

Principles of Professional Beauty Culture.

Author—Herman Goodman, B.S., M.D.

Publisher—McGraw-Hill Book Co., Inc., New York, N. Y.

A Text Book of Chemistry

Authors—Stella Goostray, R.M., B.S., Walter G. Karr, M.S., Ph.D.

Publisher—The Macmillan Co., New York, N. Y.

Gould's Medical Dictionary

Author—C. V. Brownsloy and Staff

Publisher—The Blakiston Co., Philadelphia, Pa.

The Principles and Practice of Beauty Culture

Author—Florence E. Wall, A.M., F.A.I.C.

Publisher—Keystone Publications, New York, N. Y.

The Basis of Light in Therapy

Author—Herman Goodman, B.S., M.D.

Publisher—Medical Lay Press, New York, N. Y.

A Treatise on Permanent Wave Burns

Author—Noble M. Eberhart, M.D., Ph.D., D.C.L.

Publisher—New Medicine Publishing Co., 25 E. Washington Street, Chicago, Illinois

Surgical Nursing and After-Treatment.

Author—H. C. Rutherford Darling, M.D., M.S.

Publisher—J. & A. Churchill Ltd., 104 Gloucester Place, Portman Sq., London

Cosmetology Jurisprudence

Author—Romeyn Samnans

Publisher—Parker & Baird Co., Los Angeles, California

Technic of Electro-Therapy

Authors—Stafford L. Osborne, M.S., Ph.D., and Harold J. Halmquest, B.S., B.S. (M.E.)

Publisher—Charles C. Thomas, Springfield, Ill., or Baltimore, Md.

An Introduction to Dermatology

Authors—Richard L. Sutton, M.D., ScD., LL.D., F.R.S. and Richard L. Sutton, Jr., A.M., M.D., L.R.C.P.

Publisher—The C. V. Mosby Co., St. Louis, Mo.

The Hair and Scalp

Author—Agnes Saville

Publisher—The Williams & Wilkins Co., Baltimore, Md.

How to Read a Book

Author—Mortimer Adler

Publisher—Simon & Schuster, New York, N. Y.

It is not expected that the students will read all or any one of these books. However, it will be necessary for them to be acquainted with those sections that are basic to the study of beauty culture.

Sanitary Rules and Regulations for Cosmetology Establishments Operating in South Carolina.

(Filed Secretary of State's office August 14, 1952.)

1. Lighting and Ventilation: All beauty shops and schools shall be provided with adequate natural or artificial light and shall be properly ventilated.

2. Floors: Floors must be kept mopped or waxed and walls, furniture and other fixtures must be kept clean, free from dust and in good repair.

3. Equipment: All Beauty Shop equipment must be kept clean including permanent wave machines, lavatories, dryers, shampoo-chairs, shampoo-boards, booth-dresserettes, manicuring-tables, and all permanent waving cabinets, including protectors, rods, and felts. All electrical outlets and equipment must be kept in good repair.

4. Permanent Waving Supplies: Permanent wave pads may be used once only, and must be discarded or destroyed as soon as they are removed from the rods. Used permanent wave pads, flannels, or sachets shall not be in or around any shop, or school, and failure to dispose of used pads, flannels and sachets shall be a violation of these rules and regulations.

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5. Wet Sterilizer: All Beauty Shops shall have at least one wet sterilizer (Fish-kettle preferred) containing an authorized disinfectant and must be large enough to be used for sanitizing all instruments, combs, brushes, etc., used in the beauty shop or school.

6. Dry Cabinet: All Beauty Shops shall have at least one dry cabinet with mesh shelves and large enough to accommodate all sanitized instruments, combs, brushes, linens, etc., used in the Beauty Shop or School. This cabinet must at all times have a small container filled with 40% formaldehyde.

7. Towels: All clean towels must be kept in the dry cabinet until ready for use. All soiled towels must be kept in a container, or laundry bag. Every operator shall use separate and clean towels for each patron.

8. Manicurists: A Manicurist is required to supply herself with tincture of iodine U.S.P. to be used on skin of patient if it should accidentally be broken during the process of manicuring. She must cleanse her instruments with soap and water, and immerse in 70% alcohol for at least 10 minutes. The alcohol for this purpose may be kept in a covered container of such size as will accommodate the instruments. When not in use, she must dry instruments and keep in a dry cabinet. Extra buffer covers and an additional set of instruments shall be available to provide for adequate sanitation.

9. Hot and Cold Running Water: Every owner of any beauty establishment must supply hot and cold running water in such quantities as may be necessary to conduct said beauty establishment in a sanitary manner.

10. All beauty shops and schools shall comply with the Industrial plants regulations of the State Board of Health pertaining to water supplies, common cups, drinking fountains, and toilet facilities.

11. Appearance of Operator: All operators shall wear washable outer linen apron, uniform, or coat, which shall be kept clean.

12. General Conditions: (a) The use of the beauty parlor as a living, dining or sleeping apartment is prohibited. If a beauty parlor is located in a private residence a separate room must be provided for beauty parlor work. Every shop conducted in connection with a home shall provide a separate entrance to such shop, which shall not open from any living quarters of the house or any part of the house, other than the entrance of the building.

(b) No owner, or manager, of a beauty establishment shall permit any person to work in said beauty establishment without posting his or her current South Carolina Cosmetology License or Permit.

(c) Every person engaged in the beauty establishment must thoroughly cleanse his or her hands immediately before serving each patron.

(d) All creams, lotions and other cosmetics used for patrons must be kept in clean and closed containers.

(e) Open powder boxes, rouge and lipstick must not be used in a reception room for patrons. The powder must be kept in shakers or similar receptacles. Individual lipstick and rouge shall be used.

(f) Lotions, or fluids, must be poured into a clean glass, or other sanitized container, and applied to patrons by means of cotton or other sterile methods.

(g) Creams and other semi-solid substances shall be dipped from the container with sterile article or spatula. Removing such substances with the fingers is prohibited.

13. License Posted: All beauticians must display in a conspicuous place their South Carolina current license to practice cosmetology in this State.

14. Rules Posted: A copy of these rules and regulations must be posted in Beauty Culture Shops, Schools, Colleges and other hair-dressing establishments.

15. Grade Certificate Posted: The inspectors will post in a conspicuous place in the shop a certificate denoting the grade of the shop under these rules and regulations, which shall remain as posted until removed under the direction of the State Board of Cosmetic Art Examiners. Shops to be graded as follows:

(a) GRADE A	90-100
(b) GRADE B	80- 89
(c) GRADE C	70- 79

The willful and continued violation of these rules and regulations adopted by the State Board of Cosmetic Art Examiners, and approved by the State Board of Health, constitutes a misdemeanor, punishable upon conviction by a fine of not less than \$10.00 and not more than \$50.00, or imprisonment for not less than ten days and not more than thirty days. Act 771, Section 28 (f), of the Acts of the General Assembly of 1934.

SOUTH CAROLINA STATE BOARD OF COSMETIC ART EXAMINERS.

Approved by the Executive Committee of the State Board of Health August 13, 1952.

License Fees for Nonresident Cosmetologist: Effective September 10, 1952, the Board shall charge the sum of \$15.00 to any nonresident cosmetologist who applies to the Board for a cosmetologist license and the Board shall charge any nonresident the sum of \$10.00

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upon applying for an apprentice examination. This requirement shall be in addition to the regular requirements pertaining to resident cosmetologists and apprentices.

Dairy Commission, State

ADOPTED BY THE SOUTH CAROLINA DAIRY COMMISSION

Pursuant to § 32-1610.15, S. C. Code of 1952.

(Filed Secretary of State's office October 24, 1953.)

Section 1. Application Form—Grade Certificate:

Each person wishing to make application for a permit to send, ship or deliver milk into this State under the provisions of this Act shall request of the South Carolina Dairy Commission, Rooms 211 and 213, 1015 Main Street, Columbia, South Carolina, an application for permit form. This form shall be submitted to the South Carolina Dairy Commission together with a certificate from the state agency charged with the duty of inspecting and grading the milk and/or cream at the point of origin, showing the grade and purity of the fluid milk and/or cream handled by each applicant. After receiving an approved permit from the South Carolina Dairy Commission, each applicant shall then file a copy of such certificate with the South Carolina State Board of Health and with the County Health Officer in each county or counties to which such milk and/or cream is to be delivered.

Section 2. Milk Source Certificate:

Furthermore, each applicant shall file with his application a certificate under oath on a form furnished by the South Carolina Dairy Commission showing the name, address, and grade of milk of each person or subsidiary from whom the applicant obtains milk or cream at the plant from which shipment is to be made. After receiving an approved permit from the South Carolina Dairy Commission, the applicant shall file a copy of the certificate with the South Carolina State Board of Health and the County Health Officer in the county or counties in which such milk and/or cream is to be delivered. The Dairy Commission shall issue no permit to an applicant for a grade of milk and/or cream higher than the lowest grade of milk and/or cream the applicant produces or obtains from others at point of origin from which such milk and/or cream is to be shipped; provided, should the applicant obtain milk and/or cream from others, he shall not be issued a permit higher than the lowest grade of milk and/or cream produced or handled by such others at the place from which the applicant obtains such milk and/or cream.

Section 3. Conditions, Standards, and Classification:

The Rules and Regulations defining the conditions, standards, and classifications of the type, kind, quality, condition of production, sanitary conditions and other reasonable requirements that must be complied with before milk and/or cream is shipped, transported, carried, or brought into the State of South Carolina shall be those as set forth in the 1939 Milk Ordinance and Code recommended by the U. S. Public Health Service as adopted and amended by the South Carolina State Board of Health in force as of September 1, 1953. Notwithstanding the foregoing, the South Carolina Dairy Commission retains the right and duty of determining whether or not any permit authorized to be issued under this Act should be issued, in the light of the circumstances involved in each application.

Section 4. Advance Shipment Notice:

All milk and/or cream brought into the State of South Carolina except bottled or packaged milk and/or cream delivered on established routes, shall be preceded by advance notice to the South Carolina Dairy Commission at its office in Columbia, South Carolina. Such notice shall be telegraphic in nature and shall state the amount of milk and/or cream to be shipped or delivered into South Carolina, date and time of arrival at its destination, the grade of milk and/or cream to be shipped, and the name and address of consignee.

Section 5. Sealing of Containers:

All containers of milk and/or cream brought into the State of South Carolina for fluid distribution except bottled or packaged milk and/or cream delivered on established routes, shall be sealed at the plant holding a permit to ship or bring milk and/or cream into the State of South Carolina, and said seal shall be intact upon arrival at its destination in South Carolina. Attached to the seal or the container shall be a card or label clearly showing the name of the shipper, whether the product is raw or pasteurized, the grade and amount of milk and/or cream contained therein, and the name and address of the consignee.

Section 6. Permit Renewal:

Permits issued to out-of-state shippers of bottled or packaged milk delivered into this State on established routes may be automatically renewed from month to month by the South Carolina Dairy Commission unless it has been found that any of the terms or conditions of the Act have been violated, except that all permits shall become null and void on the thirty-first day of December of each year. The Director may at any time require of any permit holder a cur-

rent certificate under oath showing the names and addresses of his producers and suppliers. Any out-of-state shipper of bottled or packaged milk and/or cream holding a permit under this Act for delivery of such products into the State and who wish to extend distribution into counties not authorized under such permits, shall give due notice to the Commission and shall file with such County Health Officers these certificates as required under this Act.

Section 7. Importer Reports:

All holders of import permits shall in accordance with Section V of the Act report monthly all fluid milk, cream, condensed skim, powdered non-fat milk, powdered whole milk or any other processed dairy products from whatever source purchased.

Section 8. Distributor Monthly Reports:

For purposes of proper enforcement of this Act, and for the development of information on deficit and surplus production of milk within the State of South Carolina, all distributors shall furnish to the South Carolina Dairy Commission on forms furnished by it monthly reports giving a detailed statement of the quantities of purchases and sales of all dairy products made within the State. Such reports shall be submitted not later than the twentieth of each month following the month such purchases and sales are made.

Section 9. Distributor Audits:

The South Carolina Dairy Commission shall audit, when deemed necessary, distributors' records to insure that South Carolina dairy farmers are paid according to the agreements between them and their distributors. When evidence is discovered by such audits to indicate that the afore-mentioned agreements have been violated, such information shall be made available to the parties concerned.

Section 10. Grade "A" Operations:

Each and every Grade "A" receiving, distributing, or processing plant from which Grade "A" whole milk and/or cream in bulk, bottled or packaged form is to be shipped either directly or indirectly into the State of South Carolina shall be definitely separated from any lower grade or ungraded whole milk and/or cream receiving, processing, or distributing operation. Specifically, all Grade "A" operations must be completely separate in personnel and equipment, and must be separated by a minimum of a solid and unbroken wall from any lower grade or ungraded milk products operation.

Pursuant to §§ 32-1610.15 and 32-1610.24, S. C. of 1952.
(Filed in the Office of the Secretary of State April 14, 1954.)

Rule and Regulation XI

Distributor Buying Plans:

Each licensed milk distributor in the State of South Carolina shall file with the South Carolina Dairy Commission on or before May 1, 1954, a detailed statement of its individual buying plan in effect with its producers stating its individual classification and the products which constitute each class. Such buying plan shall be filed in writing with each and every producer furnishing milk to such distributor. Furthermore, no change shall be made in such buying plan without ten day prior notice to the South Carolina Dairy Commission and to each producer furnishing milk to such distributor.

Rule and Regulation XII

Imported Milk Classification:

Any licensed distributor of milk in the State of South Carolina who purchases any milk from outside of the State of South Carolina, other than from out-of-state approved dairy farms producing milk for such distributor under a permit from and in accordance with the local health regulations of the county or city to which the milk is being delivered, shall, upon receipt of such milk, declare by letter to the South Carolina Dairy Commission and to the consignor of such milk at the time of purchase, the intended use of such milk in accordance with such distributor's buying plan on file with the South Carolina Dairy Commission and producers.

Payment for such milk shall be reflected to the original producer of such milk (less reasonable handling charges) by the consignor in accordance with Section 5, Act number 230 (R-301, H-1205) of the 1953 Acts and Joint Resolutions of the General Assembly of the State of South Carolina which states in part, "... and the Dairy Commission shall have the power to require such reports as will enable it to determine the quantities of imported milk purchased and the grade or classification under which it was purchased, and it shall be unlawful for such person (milk importer) to sell or distribute any imported milk in a grade or classification higher than that in which it was purchased, except upon written permission by the Dairy Commission for limited emergency purposes vital to the health of the people of this State or any community or section thereof."

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Rule and Regulation XIII

(Filed in the Office of the Secretary of State April 29, 1954)

Import—Surplus Regulation:

It shall be unlawful for any South Carolina milk distributor to import fluid milk in bulk, bottled, or packaged form for civilian fluid milk sale at any time during a period in which a surplus is declared to its producers.

Development Board

[See Research, Planning and Development Board in volume 7 of main set.]

Educational Finance Commission, State

ADOPTED BY THE SOUTH CAROLINA STATE EDUCATIONAL FINANCE COMMISSION.

Pursuant to § 21-839.7, S. C. Code of 1952.

Transportation

(Filed in the Office of the Secretary of State October 28, 1953.)

General Transportation Regulations

(Revised 1953-54 School Term)

1. The Board of Trustees of each school district shall, through the Principal or Superintendent of each school in the district, be responsible to the Commission and the County Board of Education for assistance in supervising the operation of school busses in the district. The Principal or Superintendent of each school in the district shall keep informed as to all laws and regulations governing school bus transportation and cooperate fully at all times in the execution of same. Accurate records for transportation must be kept and reports made as requested. The transportation of pupils is an integral and essential part of the school program, and teachers may be assigned to school bus duties in the interest of the transportation program.
2. In schools where pupils are transported to elementary schools which feed into central high schools for high school work, the state shall not be required to operate busses for high school and elementary pupils separately. The schedule of work and the opening and closing hours for all schools served by the same busses must be so arranged as to facilitate a maximum amount of school work and, at the same time, permit the operation of a satisfactory and economical transportation program.
3. Busses shall be routed to make two or more trips where the combined trips (one way) can be made in one hour and fifteen minutes.
4. School bus stops are to be set up on each route not less than two-tenths of a mile apart at *safe* points. During periods of inclement weather, busses may be allowed to stop at *safe* points nearest the house of each child on the regular routes. Stops shall not be made on blind curves, steep grades, or near the crests of hills. On routes where busses are required to turn around in traversing their routes, points shall be selected in the interest of safety and with a view toward the walking limit of one mile.
5. Busses must be left on the school grounds or in the vicinity of the school during the school day.
6. Pupils are not to be transported from one district to another when an appropriate school is provided within the district. This should be considered in routing all busses.
7. Parents or guardians of school pupils who have physical handicaps of lengthy duration may apply for special school bus transportation service for such pupils in the following manner:
 - a. Have the pupil examined by the local County Health Officer.
 - b. Receive a written statement from the County Health Officer to the effect that without special school bus transportation service unusual hardship is experienced by the pupil in walking the required distance to the regular route.
 - c. Submit the statement from the County Health Officer to the County Superintendent of Schools and request service.
 - d. The County Superintendent may submit the statement with a request for special school bus transportation service to the Educational Finance Commission for approval. Approval by the Educational Finance Commission shall be required before a change in a school bus route for this purpose becomes official.
 - e. Approval for such a change in a school bus route shall terminate at the end of a school year, at the time when the pupil has become normal, or when the pupil for whom the service was intended has moved to a different residence.

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8. Transportation on regular school routes is authorized only for pupils regularly enrolled in a public school in grades one through twelve.
9. Under the terms of the law creating the State Educational Finance Commission, it is declared to be the policy of the State of South Carolina not to assume the responsibility of transporting any students living within one and one-half miles of the school they attend, such distances to be determined by the most direct route over publicly maintained roads or streets. Therefore, no school bus shall stop for the purpose of picking up or discharging any school child living within one and one-half miles of the school, unless the child qualifies for transportation under one of the following conditions:
 - a. When the child qualifies for transportation due to physical handicaps as provided in Regulation Number 7.
 - b. Where no additional state-owned school busses are required, it will be permissible for school busses to transport children to and from school on the established route within one and one-half miles distance of the school if there are vacant seats on the school bus.
 - c. When the County Board of Education of any county of this state desires to have children transported to and from school within one and one-half miles distance of the school, state-owned busses may be used for this purpose providing the County Board of Education or a school district through the County Board will pay to the Educational Finance Commission 15 cents per mile or fractional part thereof traveled by busses in transporting children within the one and one-half mile. No additional state-owned busses will be assigned for transportation of students living within one and one-half miles of the school, as the number, capacity, and routes of all state-owned busses are assigned on the basis of pupils living beyond one and one-half miles of the school.
10. Each bus driver shall keep his bus in a reasonably clean and sanitary condition. The continued failure of any driver to meet this requirement shall result in his discharge. Any bus driver using a bus on an unauthorized trip shall be dismissed immediately. Local school boards shall designate a school official to see that busses shall not be abused; to assist in the investigation of damages to state-owned equipment; and to aid in the prosecution, either civilly or criminally, of any proceedings necessary to see that proper care is taken.
11. Bus drivers shall not abuse equipment assigned to them, and they shall exercise due diligence and care in their use of gasoline and oil. Each driver will promptly make any reports required. Local school boards shall replace drivers who abuse busses assigned to them.
12. The payment of the salary of any bus driver may be stopped when reports of unsatisfactory service have been investigated and found to be adequately substantiated.
13. Local school boards shall be responsible for gasoline and oil assigned to them for the use of school busses. The board shall see that someone is designated to check in these supplies and check them out to busses as needed. The school district will be held responsible for excess shortages. Any loss of more than 2 percent of the gasoline dispensed shall be considered as excessive.
14. Should the regulations of the Commission governing the use of school busses for purposes other than transporting pupils to and from school be violated in any school district, busses in such school district may be withdrawn from any further extra-curricular service.
15. Local school boards and County Boards of Education must correct violations in the routing of any school bus under their jurisdiction, or payments for providing transportation on such route or routes may be withheld; and the bus or busses may be removed from the area until such time as adequate assurances are made that the requirements of the law and the regulations of the Commission will be fully observed.

Employment Security Commission.

ADOPTED BY THE SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION.

Pursuant to §§ 68-63 and 68-151, S. C. Code of 1952.

Regulations.

Regulation X. Separation notices:

(Filed in Secretary of State's office October 25, 1954.)

B. Mass Separations:

1. The term "mass separation" means a separation (permanently, or for an indefinite period, or for an expected duration of seven or more days), of twenty-five or more workers employed in a single establishment at or about the same time and for the same reason; Provided, However, that the term "mass separation" shall not apply to separations for regular vacation periods as defined in the Act.

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2. In cases of mass separation the employer shall, for each individual affected, file with the Employment Service Office nearest the worker's place of employment, or with such office nearest employee's residence, Form UCB-113, setting forth such information as is required thereby; such form shall be filed not later than eight days, exclusive of Sundays and holidays, after such separation.

Amended: October 22, 1952.

Regulation XII. Filing Claims for Benefits and Registration Work:

A. TOTAL UNEMPLOYMENT:

1. INDIVIDUAL CLAIMS:

(a) Initial Claims:

Quoted in *Hartsville Cotton Mill v. Comm., Westbrook Advance Sheets, South Carolina Employment Security Opinion No. 16812*, filed Dec. 29, 1953.

Amendment to Regulation XII

Pursuant to §§ 68-63 and 68-151, S. C. Code of 1952.

(Filed in Secretary of State's Office Aug. 24, 1954.)

Regulation XII is hereby amended by striking out Sections A 1 (a), A 2 (a), C (b) (1), C (b) (2), C (b) (3), and D 4 and inserting in lieu thereof the following:

Regulation XII. Filing Claims for Benefits and Registration for work:

A 1 (a) Initial Claims: Any individual may file a request for a determination of his status as an insured worker in order to establish a benefit year for the purpose of claiming benefits or waiting week credits for total unemployment. Such request shall be filed in person at the Employment Service Office nearest the place of his most recent employment or residence, and shall set forth that he (1) is unemployed and that he (2) registers for work. Such request, for the purpose of these Regulations, shall be known as an Initial Claim (Form UCB-101), and shall constitute the registration of the individual for work.

2 Mass Claims:

(a) Initial Claims: The filing by an employer on Form UCB-113, in accordance with Regulation X B 1, when signed by the claimant, constitutes registration for work and a request for the determination of status as an insured worker for each individual for whom such form is submitted.

C PARTIAL UNEMPLOYMENT:

(b) Initial Claims:

- (1) For each partially unemployed worker for whom a current benefit year has not been previously established and who in one payroll week has been furnished by his employer with less than four days work or earned wages less than \$20 during such week, the employer shall promptly prepare Form UCB-114, Low Earnings Report and Claim—Partial Unemployment. All information requested on the upper portion of the form must be supplied. The employer shall, if possible, obtain the signature and address of the worker and forward Form UCB-114 to the nearest Employment Service Office. The completed Form UCB-114, signed by the claimant, shall be used as a request for determination of status as an insured worker and claim for waiting week credit for each individual for whom such form is filed.
- (2) If the worker's signature cannot be obtained, the employer shall deliver the unsigned Form UCB-114 to the nearest Employment Service Office. On his next visit to the Employment Service Office, the worker shall complete the information requested on the lower portion of the form and shall sign in the proper place, showing his present address.
- (3) The worker may file his request for determination of status as an insured worker and claim for waiting week credit using Form UCB-114, if available, and if not, using Form UCB-115, provided he does so within 28 days immediately following the date upon which he received appropriate notice from his employer as to his earnings with respect to any week of partial unemployment.

D LABOR DISPUTES:

- 4 The list of names as set forth above shall constitute a request for determination of status as an insured worker for each individual affected thereby and a special examiner designated by the Commission, according to Section 68-114 of the Act, shall make a determination as to whether or not such unemployment exists because of a labor dispute, and for seven (7) days thereafter from the first day of unemployment.

This regulation shall become effective on or after August 25, 1954.

Regulation XX. Payment of Benefits to Interstate Claimants and the Combination of

Wage Credits:

(Filed Secretary of State's Office April 24, 1953.)

Section 1. The following regulation shall govern the South Carolina Employment Security Commission, in its administrative co-operation with other States adopting a similar regulation for the payment of benefits to interstate claimants.

A. DEFINITIONS:

As used in this regulation, unless the context clearly requires otherwise:

1. "Interstate Benefit Payment Plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the State (or States) in which benefit credits have been accumulated.
2. "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable States through the facilities of an agent State. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent State to work in a liable State unless the South Carolina Employment Security Commission finds that this exclusion would create undue hardship on such claimants in specified areas.
3. "State" includes Alaska, Hawaii, and the District of Columbia.
4. "Agent State" means any State in which an individual files a claim for benefits from another State.
5. "Liable State" means any state against which an individual files, through another State, a claim for benefits.
6. "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any State.
7. "Week of unemployment" includes any week of unemployment as defined in the law of the liable State from which benefits with respect to such week are claimed.

B. REGISTRATION FOR WORK:

1. Each interstate claimant shall be registered for work, through any public employment office in the agent State when and as required by the law, regulations, and procedures of the agent State. Such registration shall be accepted as meeting the registration requirements of the liable State.
2. Each agent State shall duly report, to the liable State in question, whether each interstate claimant meets the registration requirements of the agent State.

C. BENEFIT RIGHTS OF INTERSTATE CLAIMANTS:

1. If a claimant files a claim against any State, and it is determined by such State that the claimant has available benefit credits in such State, then claims shall be filed only against such State as long as benefit credits are available in that State. Thereafter, the claimant may file claims against any other State in which there are available benefit credits.

For the purpose of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

2. The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims (notices of unemployment) filed on or after July 5, 1953.

D. CLAIMS FOR BENEFITS:

1. Claims for benefits or waiting-period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent State. Any adjustments required to fit the type of week used by the liable State shall be made by the liable State on the basis of consecutive claims filed.
2. Claims shall be filed in accordance with agent-State regulations for intrastate claims in local employment offices, or at an itinerant point, or by mail.

(a) With respect to claims for weeks of unemployment in which individual was not working for his regular employer, the liable State shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(b) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable State shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent State.

E. DETERMINATION OF CLAIMS:

1. The agent State shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable State in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent State.

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2. The agent State's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent State shall not refuse to take an interstate claim.

F. APPELLATE PROCEDURE:

1. The agent State shall afford all reasonable co-operation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.
2. With respect to the time limits imposed by the law of a liable State upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable State on the date when it is received by any qualified officer of the agent State.

G. EXTENSION OF INTERSTATE BENEFIT PAYMENTS TO INCLUDE CLAIMS TAKEN IN AND FOR CANADA:

This regulation shall apply in all its provisions to claims taken in and for Canada.

This regulation shall become effective with respect to new claims filed on or after July 5, 1953.

Health, State Board of.

ADOPTED BY THE SOUTH CAROLINA BOARD OF HEALTH.

(Pursuant to § 32-8, S. C. Code of 1952.)

Eating and Drinking Establishments and Other Retail Food Establishments.

(Filed Secretary of State's office May 15, 1953.)

Section 1. Definitions:

The following definitions shall apply in the interpretation and enforcement of these regulations.

a. Eating and Drinking Establishments: The term "Eating and Drinking Establishments" shall mean restaurants, school lunch units, soda fountains, industrial feeding establishments, hospital feeding establishments, boarding houses, institutional feeding establishments, and all other eating and drinking establishments as well as kitchens or other places in which food or drink is prepared for sale elsewhere.

(1) Restaurant: The term "Restaurant" shall mean restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, hotel dining facilities, and all other public eating and drinking establishments, as well as kitchens in which food and drink are prepared for sale elsewhere to the public.

(2) School Lunch Unit: The term "School Lunch Unit" shall mean all rooms in which food for students is prepared, stored, or served.

(3) Soda Fountain: The term "Soda Fountain" shall mean soda fountain, soda shop, drug store, or similar establishment where food or drink for sale to the public is prepared, stored or served.

(4) Industrial Feeding Establishment: The term "Industrial Feeding Establishment" shall mean all rooms in which food or drink for employees, guests or the general public, is prepared, stored, or served.

(5) Hospital Feeding Establishment: The term "Hospital Feeding Establishment" shall mean all rooms in which food or drink for patients, inmates, employees, guests or the general public, is prepared, stored, or served.

(6) Boarding House: The term "Boarding House" shall mean all boarding houses or transient guest homes which serve food or drink to transient guests or to the general public.

(7) Institutional Feeding Establishment: The term "Institutional Feeding Establishment" shall mean all rooms in which food or drink for students, patients, inmates, employees, guests, or the general public, is prepared, stored, or served.

b. Other Retail Food Establishments: The term "Other Retail Food Establishments" shall mean markets, locker plants, confection candy kitchens, delicatessens, retail bakeries, church feeding facilities, private or semi-private club feeding facilities, grocery stores, fruit and vegetable shops, and all other retail food handling establishments.

(1) Market: The term "Market" shall mean any place where meats, fish, shellfish, or poultry, whether raw, processed or prepared, are offered for sale or free distribution to the public.

(2) Locker Plant: The term "Locker Plant" shall mean any place equipped with refrigeration facilities and storage lockers where meats, poultry, fruits or vegetables are handled, processed, frozen, or stored.

(3) Confection Candy Kitchen: The term "Confection Candy Kitchen" shall mean all rooms in which confections or candies are prepared, stored, or served.

(4) Delicatessen: The term "Delicatessen" shall mean all places where prepared foods, cooked or prepared meats, preserves, relishes, and similar foods are prepared, stored, or served.

(5) Retail Bakery: The term "Retail Bakery" shall mean all places where breads, cakes, cookies, do-nuts, and similar foods are prepared, stored, or served for retail distribution to the public.

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(6) **Church Feeding Facilities:** The term "Church Feeding Facilities" shall mean all rooms in which food or drink for members, guests, or the general public is prepared, stored, or served.

(7) **Private or Semi-Private Club Feeding Facilities:** The term "Private or Semi-Private Club Feeding Facilities" shall mean all rooms in which food or drink for members, guests, employees, or the general public is prepared, stored, or served.

(8) **Grocery Store:** The term "Grocery Store" shall mean any place where groceries, including food stuffs, vegetables, candies, pastries, canned or wrapped foods, and all other food for human consumption are processed or prepared, and are offered for sale or free distribution to the public.

(9) **Fruit and Vegetable Shop:** The term "Fruit and Vegetable Shop" shall mean any place where fresh vegetables and/or fruits are offered for sale or free distribution to the public.

c. **Itinerant Eating and Drinking, or Other Retail Food Establishment:** The term "Itinerant Eating and Drinking, or Other Retail Food Establishment" shall mean one operating for a temporary period in connection with a fair, carnival, circus, public exhibition, or other similar gathering.

d. **Employee:** The term "Employee" shall mean any person who handles food, meat, confection or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed at any time in a room in which food, meat, confection or drink is prepared, offered for sale, served, prepared for sale elsewhere, or stored.

e. **Utensils:** "Utensils" shall include any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.

f. **Health Officer:** The term "Health Officer" within the meaning of these regulations shall mean the health authority of the cities, and/or counties, and/or the state, or his authorized representative.

g. **Person:** The word "Person" shall mean person, firm, corporation, or association.

Section 2. Permits:

It shall be unlawful for any person to operate an eating and drinking establishment or other retail food handling establishment in the state who does not possess an unrevoked permit from the health officer. Such permit shall be posted in a conspicuous place designated by the health officer. Only persons who comply with the requirements of these regulations shall be entitled to receive and retain such a permit. A person conducting an itinerant eating and drinking or other itinerant retail food establishment may, in the discretion of the health officer, be exempted from the requirement of securing a permit.

Such a permit may be temporarily suspended by the health officer upon the violation of the holder of any of the terms of these regulations, or revoked after opportunity for hearing by the health officer upon serious or repeated violation.

Section 3. Placarding or Public Display of Grade Notice:

Every eating and drinking establishment shall display at all times, in a place designated by the health officer, a notice approved by the health officer, stating the grade of the establishment. Such grade notice may, at the discretion of the health officer, be required for other retail food establishments as defined in section 1-b.

Section 4. Examination and Condemnation of Unwholesome or Adulterated Food or Drink:

Samples of food, drink and other substances, may be taken and examined by the health officer as often as may be necessary for the detection of unwholesomeness or adulteration. The health officer may condemn and forbid the sale of, or cause to be removed or destroyed, any food or drink which is unwholesome or adulterated.

Section 5. Inspection of Eating and Drinking Establishments and Other Retail Food Establishments:

At least once in every six months the health officer shall inspect every eating and drinking establishment and other retail food establishment within the State. In case the health officer discovers the violation of any item of sanitation required for the grade then held, he shall make a second inspection after the lapse of such time as he deems necessary for the defect to be remedied, and the second inspection shall be used in determining compliance with the requirements of these rules and regulations. Any violation of the same requirement of these rules and regulations on two consecutive inspections shall call for immediate degrading or suspension of permit.

One copy of the inspection report shall be posted by the health officer upon an inside wall of the eating and drinking establishment or other retail food establishment; and said inspection report shall not be defaced or removed by any person except the health officer. Another copy of the inspection report shall be filed with the records of the health department.

The person operating the eating and drinking establishment or other retail food establishment shall upon request of the health officer permit access to all parts of the establishment and shall permit copying any or all records of food purchased.

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Section 6. The Grading of Eating and Drinking Establishments and Other Retail Food Establishments:

The grading of all eating and drinking establishments and other retail food establishments shall be based upon the following standards:

Sanitation Requirements for Grade "A" eating and drinking establishments and other retail food establishments.

All Grade "A" eating and drinking establishments and other retail food establishments shall comply with all of the following items of sanitation:

Item 1. Floors: The floors of all rooms in which food, meat, confection or drink is prepared, offered for sale, served, prepared for sale elsewhere, or stored, or in which utensils are washed, shall be of such construction as to be easily cleaned, shall be smooth and shall be kept clean and in good repair.

Public Health Reason:

Properly constructed floors which are in good repair can be more easily kept clean than improperly constructed floors. Floors having an impervious surface can be kept clean more easily than those constructed of pervious or easily disintegrated material, will not absorb organic matter, and are, therefore, more likely to be kept clean and free of odors. Clean floors are conducive to clean food handling methods.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) The floors of all rooms in which food, meat, confection or drink is prepared, offered for sale, prepared for sale elsewhere, served, or stored, are of such construction as to be easily cleaned, are smooth, and are in good repair. Floors may be of concrete, terrazzo, tile, wood covered with linoleum or tight wood. Wooden floors containing cracks, holes, broken boards or poorly fitting joints, or which otherwise fail to be tight, do not comply with this item. When floor drains are used they are provided with proper traps and so constructed as to minimize clogging, and the floors are graded to drain.

(2) All floors are kept clean and free from litter during the hours of preparing, cooking, offering for sale, or serving of food. Dustless methods of floor cleaning or dust-arresting sweeping compounds are used and all except emergency floor cleaning is done during those periods when the least amount of food, meat, confection, or drink is exposed, such as—after closing or between meals.

(3) Floors of locker plants are constructed of concrete or other equally impervious material. The floors of fruit and vegetable shops are approved by the health officer.

Item 2. Walls and Ceilings: The walls and ceilings of all rooms in which food, meat, confection or drink is prepared, offered for sale, served, prepared for sale elsewhere, or stored, shall be constructed of sound material with easily cleanable surfaces, and shall be maintained clean and in good repair. The kitchen and work rooms shall be finished in a light color. The walls of all rooms in which food, meat, confection or drink is prepared or utensils are washed, shall have a smooth, washable surface up to the level reached by splash or spray.

Public Health Reason:

Walls and ceilings constructed of sound material with a smooth, properly finished surface are more easily kept clean. A light colored paint or finish aids in the even distribution of light and the detection of unclean conditions. Clean walls and ceilings are conducive to better sanitary conditions.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) The walls and ceilings of all rooms in which food, meat, confection, or drink is prepared, offered for sale, served, prepared for sale elsewhere, or stored, are clean, free of cobwebs, dust, dirt, grease, and all filth and are maintained in good repair.

(2) The walls and ceilings of all rooms are painted or finished in a light color and are refinished as often as is necessary in a manner approved by the health officer, which will permit easy cleaning and aid in the even distribution of light.

(3) The walls of all kitchens or rooms in which food, meat, confection or drink is prepared have a smooth, washable surface up to the level reached by splash or spray resulting from the cleaning, washing or preparing of food, meat, confection, drink or utensils.

(4) The walls and ceilings of all rooms in which food, meat, confection or drink is prepared, offered for sale, served or stored, are constructed of wood, tile, smooth surface concrete, cement plaster, brick or other suitable material, all with easily cleanable surfaces. Walls or ceilings containing cracks, holes, broken boards, or poorly fitting joints or which otherwise fail to be tight and smooth do not comply with this item.

(5) Walls of locker plants are constructed of concrete or other equally impervious material, are smooth and kept clean.

(6) The walls and ceilings of fruit and vegetable shops are approved by the health officer.

Item 3. Doors and Windows: All openings to the outer air in rooms in which food, meat, confection or drink is prepared, offered for sale, served, prepared for sale elsewhere, stored, or in which utensils are washed or stored shall be effectively screened, unless other effective means are provided to prevent the entrance of flies or other insects. Screen doors, if used, shall open outward and be self-closing, unless otherwise specified by law.

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Public Health Reason:

Flies and other insects may serve as vehicles which may contaminate the food, meat, confection or drink with disease organisms, thus nullifying the effectiveness of other public health safeguards used in a clean, sanitary establishment.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All openings to the outer air of rooms in which food, meat, confection, or drink is prepared, offered for sale, prepared for sale elsewhere, served or stored are effectively screened with not less than 16 mesh wire or plastic cloth; and all doors are self-closing and screen doors to the outer air open outward unless otherwise specified by law; OR

(2) Fans of sufficient power to prevent the entrance of flies or other insects are in use at otherwise ineffectively protected entrances; OR

(3) Flies or other insects are absent.

Window and door screens must be tight-fitting and free of holes as must the screens for skylights and transoms.

Item 4, Lighting: All rooms in which food, meat, confection, or drink is prepared, offered for sale, prepared for sale elsewhere, served, or stored, shall be well lighted.

Public Health Reason:

Ample light promotes cleanliness.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) In rooms in which food, meat, confection, or drink is prepared, or prepared for sale elsewhere, or in which utensils are washed, artificial light sources are provided and properly used, which furnish 15-foot candles on all working surfaces, as measured by a suitable light meter, except when adequate equivalent natural light is present. Artificial light sources are installed to provide even distribution of light and prevent glare. This intensity of lighting does not apply to the dining room. In rooms used for storage, artificial light sources are provided which furnish approximately 5-foot candles at a distance of 30 inches from the floor.

(2) All skylights and natural light openings are clean and in good repair.

Item 5, Ventilation: All rooms in which food, meat, confection, or drink is prepared, or stored or in which utensils are washed or stored shall be effectively ventilated.

Public Health Reason.

Proper ventilation reduces bacterial concentration in the air, helps to reduce odors, condensation upon walls, fixtures and ceilings which may drop into the food, meat, confection or drink or into utensils, aids in eliminating excessive heat and the concentration of toxic gases produced as a by-product of combustion or otherwise. Moisture promotes mold development.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All rooms are adequately ventilated so as to be reasonably free of disagreeable odors and condensation. Ventilation equipment supplementary to doors and windows, such as adequate exhaust fans or stove-hoods is provided if necessary. (This requirement does not apply to cold storage rooms.)

(2) All ventilation equipment is maintained clean and in good repair.

Item 6, Toilet Facilities: Adequate and conveniently located toilet facilities, conforming to the rules and regulations of the State Board of Health, shall be provided for employees. The doors of all toilet rooms shall be self-closing. Coin-operated devices shall not be installed on outside doors to toilet rooms. Toilet rooms shall be kept clean, in good repair, well lighted and ventilated, and all openings to the outer air effectively screened. All establishments covered by these regulations which are constructed or remodeled, or establishment for which operating permits are issued under new management after the promulgation of these regulations, shall be provided with flush-type toilet facilities connecting to a public sewage disposal system or to a septic tank disposal system approved by the State Board of Health. If privies are permitted and used, they shall be separated from the establishment and shall be constructed and maintained in conformity with the rules and regulations of the State Board of Health. Toilet tissue shall be provided in each toilet room.

Public Health Reason:

Human excreta is potentially dangerous and must be properly disposed of. The organisms causing typhoid fever, paratyphoid fever, dysentery, or other intestinal diseases may be present in the body discharges of cases or carriers. Sanitary toilet facilities are necessary to protect the food, meat, confection, drink and utensils from fecal contamination carried by flies, other insects and rodents. Employees help to prevent such contamination of food and utensils by washing their hands after using the toilet.

Flush-type toilets connecting to a public sewage disposal system or to an approved septic tank disposal system afford better protection from such possible contamination than is offered by the pit privy. When pit privies are used, it is essential that they be of a sanitary type in which the excreta is protected from flies and other agents of transmission and that they not be rendered ineffective by improper operation.

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Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) An adequate number, as specified in the Industrial Plant Regulations, of conveniently located toilet facilities are provided for the employees of each sex and the toilet facilities comply with the standard plumbing practices of the State.

(2) Conveniently located means located in the same building housing the establishment.

(3) The toilet rooms and fixtures are kept clean, sanitary, and in good repair and free from flies or other insects.

(4) The toilet room doors are provided with springs or checks to make them self-closing, and outside doors are not equipped with coin-operated devices.

(5) The toilet rooms are well lighted and ventilated to the outside air.

(6) Any establishment covered by these regulations which, at the time that these regulations are promulgated, provides sanitary pit privies for the use of employees is not required to install flush-type toilets and approved sewage disposal system UNLESS: the building is remodeled OR extensively repaired. If, however, an establishment covered by these regulations closes, moves, or goes out of business then before any establishment covered by these regulations can receive an operating permit in the same building the establishment seeking the operating permit must provide flush-type toilets and approved sewage disposal system.

(7) The privies are constructed and operated in accordance with the regulations and standards of the State Board of Health.

(8) A booth open at the top or bottom does not qualify as a toilet room.

(9) Toilet tissue is provided in each toilet room.

Item 7. Water Supply: Hot and cold water, under pressure, shall be easily accessible to all rooms in which food, meat, confection or drink is prepared or in which utensils are washed. The water supply shall be adequate, of a safe, sanitary quality and shall meet all requirements of the State Board of Health as to drinking water.

The use of the common drinking cup is prohibited.

Public Health Reason:

Water under pressure should be easily accessible so as to encourage its use in cleaning operations; it should be adequate so that cleaning and rinsing will be thorough; hot and cold water aid in proper cleaning and it should be of a safe, sanitary quality in order to be suitable for drinking and to avoid contamination of food, meat, confection, drink and utensils.

The common drinking cup serves as a means of transmitting many diseases.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Hot and cold water outlets under pressure are easily accessible to all rooms in which food, meat, confection or drink is prepared and to all rooms in which utensils are washed.

(2) The water supply is ample in quantity to insure proper, necessary cleaning of floors, walls, utensils, and equipment.

(3) The water supply is approved by the State Board of Health.

(4) There are no cross-connections or back-siphonages.

(5) Water storage tanks, if used, are of corrosion-resistant material, properly covered, clean, and the inlet and outlet openings so arranged as to prevent contamination during filling and emptying.

(6) No common drinking cups are in use.

Item 8. Lavatory Facilities: Adequate and convenient hand washing facilities shall be provided for employees including hot and cold water under pressure, soap and approved sanitary towels. Hand washing facilities shall be maintained clean and in good repair. The use of the common towel is prohibited. All employees shall wash their hands after using the toilet room and before handling any food, meat, confection, drink, equipment or utensils.

Public Health Reason:

The use of hand washing facilities and sanitary towels is essential to the cleanliness of employees who handle any food, meat, confection or drink.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Hand washing facilities, including hot and cold water under pressure, soap, and individual paper or cloth towels are provided for employees in adequate amounts; the hand washing facilities are so located as to be convenient to the toilet rooms and/or kitchens or rooms in which food, meat, confection or drink is prepared, served or stored; and the hand washing facilities are maintained clean and in good repair.

(2) Sinks or washing vats in which utensils, food or equipment are washed are not used for hand washing, bathing or the washing of clothes.

(3) Adequate hot water is available at all times or within a reasonable time after opening the faucets.

(4) All employees wash their hands after using the toilet room and before handling any food, meat, confection, drink, utensils or equipment.

(5) Mop sinks may be used for hand washing in school lunch units provided a proper mixing faucet is installed.

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Item 9. Construction of Equipment and Utensils: All utensils (excluding single service utensils), show cases, display cases, windows, counters, shelves, tables, sinks, refrigeration equipment, knives, saws, grinders, slicers, meat blocks, lockers and all other equipment used in preparing, serving or storing of food, meat, confection or drink shall be of a sanitary construction, shall be resistant to the corrosive action of foods, meats, confection, or drinks, shall be in good repair and shall be easily accessible for cleaning.

Utensils or equipment containing or plated with cadmium or lead are prohibited; provided that solder containing lead may be used for joining.

The use of any utensil or equipment which is chipped, badly worn, rusted, corroded or in such condition that it cannot be easily cleaned is prohibited.

Public Health Reason:

If the utensils and equipment used in preparing, serving, or storing of foods, meat, confection or drinks are not so constructed as to be easily cleaned, resistant to corrosion, and are not kept in good repair it is unlikely that they will be properly cleaned. Cadmium and lead poisoning outbreaks have been reported from the ingestion of acid food or drink which had been in contact with containers containing or plated with cadmium and lead.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All surfaces of utensils and/or equipment with which food, meat, confection or drink come in contact are constructed of smooth, not readily corrodible material, are in good repair, free of breaks, corrosion, open seams, cracks and chipped places, are easily accessible for cleaning and are self-draining. This requirement precludes the use of any type of equipment so designed as to permit food or drink routinely to come in contact with V-type threaded surfaces. In all cases where a rotating shaft is inserted through a surface with which food or drink comes in contact, the joint between the moving and stationary surfaces is close fitting.

(2) All display cases, windows, counters, shelves, tables, refrigeration equipment, stoves, hoods, knives, saws, grinders, slicers, meat blocks or other equipment are so constructed as to be easily cleaned and are in good repair.

(3) No utensils containing or plated with cadmium or lead are used; provided that solder containing lead may be used for jointing.

Item 10. Cleaning and Bactericidal Treatment of Utensils and Equipment: All utensils (excluding single service utensils) used for eating or drinking shall be thoroughly cleaned and effectively subjected to an approved bactericidal process after each usage. All utensils (excluding single service utensils) used in the preparation, serving, or storage of food, meat, confection or drink shall be thoroughly cleaned and subjected to an approved bactericidal treatment after each usage; except in the case of utensils used in markets and locker plants which shall be thoroughly cleaned and effectively subjected to an approved bactericidal treatment immediately following the day's operations, or oftener if necessary.

All equipment, including display cases or windows, counters, shelves, tables, meat blocks, stoves, hoods, sinks, grinders, slicers, knives, saws, lockers and all other equipment used in preparing, serving or storing of food, meat, confection or drink shall be kept clean and free from dust, dirt, grease, insects and other contaminating material.

All cloths used by any employee shall be clean. Drying cloths, if used, shall be clean and shall be used for no other purpose.

Single service containers, straws and eating utensils shall be used only once.

All equipment and utensils shall be maintained at all times in a clean, sanitary condition.

Facilities, material and equipment for proper cleaning and bactericidal treatment shall be provided.

No article, polish, or other substances containing any cyanide preparation or other poisonous material shall be used for the cleaning or polishing of utensils or equipment.

Public Health Reason:

Food, meat, confection or drink cannot be kept clean and safe if permitted to come in contact with containers, utensils or equipment which have not been properly cleaned and given an effective bactericidal treatment. No cleaning or polishing compound or preparation which is harmful to humans should be used in any of the establishments covered by these regulations.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All utensils (excluding single service utensils) used for eating and drinking and all utensils used in the preparation, serving, or storing of food, meat, confection or drink are thoroughly cleaned after each usage. Utensils used in markets or locker plants are thoroughly cleaned and disinfected immediately following the day's operations or oftener if necessary to prevent insanitary conditions.

(2) All equipment, including display cases or windows, counters, shelves, tables, meat blocks, stoves, hoods, sinks, grinders, slicers, knives, saws, lockers and all other equipment used in preparing, serving or storing of food, meat, confection or drink are kept clean and free from dust, dirt, insects, rodents and other contaminating material.

(3) All cloths used for any purpose by any employee are clean.

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(4) All single service articles, such as containers, straws, eating utensils and milk bottle caps are used only once.

(5) After cleaning, all utensils which are used in preparing, serving or storing of food, meat, confection or drink, as well as all equipment which comes in contact with food, meat, confection or drink either in preparation, serving or storing is effectively subjected to one or more of the following or other equivalent approved bactericidal processes:

- (a) If steam is employed, the cleaned surfaces to be disinfected shall be in contact with clean, live steam for a period of not less than three minutes.
- (b) If hot water is used, the cleaned surfaces to be disinfected shall be immersed in clean, hot water at a temperature of not less than 170 degrees F. for a period of not less than two minutes, or for 30 seconds in boiling water. Care must be taken to prevent trapping of air in containers which are immersed. Unless actually boiling water is used, an approved thermometer shall be available, convenient to the vat. The pouring of scalding water over the washed utensils shall not be accepted as satisfactory compliance.
- (c) Immersion for at least two minutes in a lukewarm chlorine bath containing at least 50 ppm of available chlorine if hypochlorites are used, or a concentration of equal bactericidal strength if chloramines are used. The bath should be made up at a strength of 100 ppm or more of hypochlorites and shall not be used after its strength has been reduced to 50 ppm. For the chlorine treatment to be effective, all surfaces being treated must be thoroughly cleaned. Chlorine solutions once used shall not be re-used for bactericidal treatment on any succeeding day.
- (d) If other bactericides or bactericidal methods are used, the recommendations of the health officer shall be followed.
- (e) The specifications and operating procedures pertaining to wash vats, heating facilities, thermometers, steam or hot air cabinets, and washing machines are approved by the health officer.
- (6) No article, polish, or other substance containing any cyanide preparation or any other poisonous material is used for the cleaning or polishing of utensils or equipment.
- (7) All containers for food, meat, confection or drink are carefully inspected before being used and, if necessary, recleaned before using.

Item 11. Storage and Handling of Utensils: After bactericidal treatment all utensils shall be stored in a clean, dry place; protected from flies and other insects, dust, rodents, and other contamination as far as practicable. Single service utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a sanitary manner. Ice cream dippers, dispensing spoons and similar utensils shall be stored in an approved manner. Detergents, insecticides, and other similar products shall be so stored as to prevent contamination of food, meat, confection, drink or any utensils or equipment.

Public Health Reason:

If utensils and equipment which comes in contact with food, meat, confection or drink are not stored and handled, after cleaning, in such a manner as to prevent contamination, the value of the cleaning and bactericidal treatment may be nullified.

Detergents, insecticides, or similar materials may create a serious public health hazard if improperly stored or handled.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All utensils, or equipment, used in preparing, serving, or storing food, meat, confection or drink are stored at a sufficient height above the floor in a clean, dry place, protected from insects, overhead leakage, condensation, splash, dust, vermin, rodents and other contamination, and the utensils and containers inverted when practical.

(2) Drain racks, trays and shelves are made of not readily corrodable material and are kept clean.

(3) Containers and utensils are not handled by the surfaces which come in contact with the food, meat, confection, or drink.

(4) Paper cups, plates, straws, spoons, forks, and other single service containers and utensils are purchased in sanitary cartons and stored therein in a clean, dry place until used, and after removal from the carton the container and other single service utensils are handled in a sanitary manner.

(5) Laundered cloths and napkins are stored in a clean, dry place until used.

(6) Spoons, spatulas, dippers or scoops used for dispensing of frozen desserts or food are, when not in use, kept in running water or water maintained at 170 degrees F. or in a manner approved by the health officer.

(7) Detergents, insecticides, and other similar products are stored in a room or cabinet separated from utensils, equipment, food, meat, confection, or drink.

Item 12. Disposal of Wastes: All liquid wastes shall be disposed of through a public sewer or a disposal system approved by the State Board of Health. All non-liquid waste, garbage, refuse, offal and decaying vegetables and trash shall be kept in adequate, suitable, water-tight.

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receptacles with a tight-fitting lid. These containers to be emptied daily, or as often as necessary, and the contents disposed of in a manner approved by the health officer. Containers are to be washed and treated to prevent nuisance. No container used for garbage or refuse shall be used for any other purpose.

Public Health Reason:

All garbage, refuse, and liquid wastes resulting from the operation of any of these establishments constitute a sanitary hazard and should be properly disposed of so as not to become a nuisance or a public health menace.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All liquid wastes such as result from any cleaning and rinsing operations, from flush toilets, from lavatories, from dishwashing machines or from refrigeration equipment or any other liquid wastes are disposed of in a public sewer or, in the absence of a public sewer, by a method approved by the State Board of Health. Grease traps, of an adequate size, are recommended where much grease is discharged.

(2) All non-liquid wastes such as garbage, refuse, offal, decaying vegetables, rubbish and trash are kept in tight, non-absorbent, and easily washable receptacles which are covered with tight-fitting lids while pending removal and these containers are adequate in size.

(3) All non-liquid wastes such as garbage, refuse, offal, decaying vegetables, rubbish and trash are removed from the premises daily or as frequently as may be necessary to prevent a nuisance and unsightliness, and are disposed of in a manner approved by the health officer.

(4) All receptacles used as containers for non-liquid wastes are washed when emptied, and treated with a disinfectant if necessary, to prevent a nuisance.

(5) No receptacle used as a container for non-liquid wastes is used for any other purpose.

Item 13. Refrigeration: Adequate refrigeration facilities shall be provided for the proper storing of all readily perishable food, meat, confection or drink and the refrigeration facilities shall be maintained at a proper temperature to prevent unwholesomeness or spoilage of any food, meat, confection or drink being stored. All refrigeration facilities shall be kept clean and in good repair.

Public Health Reason:

Readily perishable food, meat, confection or drink may contain pathogenic bacteria which will cause spoilage, unwholesomeness, or disease. For this reason readily perishable foods, meat, confection or drink should be kept at a sufficiently low temperature as will prevent the growth of these harmful bacteria.

Refrigeration facilities should be adequate in size to eliminate insanitary storage practices, overloading, and to provide for the proper circulation of the refrigerated air.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) Adequate refrigeration facilities are provided for all readily perishable food, meat, confections or drink when necessary.

(2) The refrigeration facilities are not overloaded beyond the refrigeration capacity.

(3) The refrigeration facilities are kept at the proper temperatures recommended for the protection of food, meat, confection or drink being stored. Provided that all custard filled and cream filled pastries, milk and milk products, egg products, meat, fish, shellfish, gravy, poultry stuffing, and sauces, dressings, and salads containing meat, fish, eggs, or milk or milk products are to be kept refrigerated at or below 50 degrees F., except when being prepared or served.

(4) The food, meat, confection or drink being kept in the refrigeration facilities are so arranged and stored as to permit the proper circulation of air and to prevent contamination from dripping or improper contact.

(5) To prevent contamination of the refrigerator contents from possible sewage backflow, all waste water from refrigeration equipment drains into an approved, properly trapped drain or is disposed of in a manner approved by the health officer.

(6) All refrigeration facilities are maintained clean and in good repair.

Item 14. Wholesomeness of Food, Meat, Confection and Drink: All food, meat, confection, drink and ingredients thereof shall be clean, wholesome, free from spoilage, and so prepared as to be safe for human consumption. All ingredients, including milk, fluid milk products, ice cream or other frozen desserts, oysters, clams, mussels or other seafood or any other products or ingredients offered for sale or used in preparing or serving any food, meat, confection or drink shall be from sources approved by the health officer. All milk and fluid milk products, excluding cream which may be served from the original bottle or from a dispenser approved by the health officer for such service, shall be offered for sale, used or served in the individual original containers in which they were received from the distributor, or from approved bulk dispensers.

All shucked oysters, clams and mussels shall be kept until used in the containers in which they were placed at the shucking plant.

Any food, meat, confection or drink which has become tainted or spoiled shall be considered as waste and disposed of as provided for under Item 11.

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Public Health Reason:

Food, meat, confection or drink or ingredients thereof may be harmful or distasteful to the consumer unless from approved sources, clean, wholesome, free of spoilage and so prepared and served as to be safe for human consumption. The possibility of contamination of milk and fluid milk products and shellfish from insanitary handling or serving is reduced by keeping in and serving from original containers as received from the distributor. Many diseases may result from the use of unclean, unwholesome, spoiled food, meat, confection, drink or ingredients used in the preparation thereof as well as from insanitary methods of preparation, storing and serving.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All food, meat, confection, drink and ingredients thereof are clean, wholesome, free from spoilage; are from approved sources; and are so prepared as to be safe for human consumption.

(2) All custard or creamed filled pastries served have been rebaked, after filling, at an oven temperature of at least 425° F. for at least 20 minutes and cooled to 50° F. or less within one hour after rebaking; or the filling has been heated before the pastry shells were filled, so that every particle of the mix was held at a temperature of at least 190° F. for at least 10 minutes and cooled, either before or after filling the pastry shells, to 50° F. or less within one hour after heating.

(3) All milk, fluid milk products, ice cream or other frozen desserts, oysters, clams, mussels or other seafoods or any other products or ingredients offered for sale or used in preparing or serving any food, meat, confection or drink are from sources approved by the health officer. In instances where raw milk is served, there shall be displayed at all times in a place designated by the health officer, a notice approved by the health officer, stating that only raw milk is available for service.

Pasteurized milk and milk products are used where available.

(4) All milk and fluid milk products which are offered for sale, used, or served are in the individual original containers in which they were received from the distributor. Cream offered for sale complies with the same requirements as for milk or fluid milk products; provided that cream used or served in any of the establishments covered by these regulations may be served from the original bottle or from a dispenser approved by the health officer for such service.

(5) All shucked oysters, clams or mussels are kept, until used, in containers in which they were placed at the shucking plant.

(6) Any food, meat, confection, drink or ingredients thereof which become tainted or attacked by putrifiactive action is immediately removed from the premises, placed in proper waste disposal receptacles and disposed of as prescribed for disposal of wastes.

(7) All ice is from a source approved by the health officer and is handled and stored in a manner to prevent contamination.

Item 15. Storage, Display, Sale and Serving of Food, Meat, Confection or Drink:

All food, meat, confection or drink or ingredients thereof shall be so stored, displayed, sold or served as to be free from dust, dirt, insects, vermin, rodents, unnecessary handling, droplet infection, overhead leakage and submerging or any other contamination. No animals, pets, or fowls shall be kept or allowed in any room in which any food, meat, confection or drink is prepared, offered for sale, or served. All means necessary for the control and elimination of insects or rodents shall be used.

Public Health Reason:

Food, meat, confection or drink or ingredients thereof which are not protected from contamination while being stored, displayed, sold or served may become a public health hazard.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) All food, meat, confection, drink or ingredients thereof are stored, and displayed in such a manner as to be protected from dust, dirt, insects, vermin, rodents, unnecessary handling, droplet infection, overhead leakage and condensation, sewage backflow or other submerging, or any other contamination.

Evidence of the presence of rodents, roaches, flies, ants or other insects or vermin is considered a violation of this item.

Food, meat, confection, drink or ingredients thereof is not stored or prepared beneath any overhead pipes unless such pipes are provided with suitable means to carry off any possible leakage or condensation.

Food, meat, confection, drink or ingredients thereof is so stored as to be protected from any possible flooding or sewage backflow.

(2) All food, meat, confection, drink or ingredients thereof is handled, sold or served in such a manner as to minimize the opportunities for contamination. The serving of sliced butter and cracked ice is not by direct contact with fingers or hands. The manual contact in the preparation, sale or serving of food, meat, confection or drink is permitted only if the hands are clean.

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Sugar, salt, mustard, and similar materials are served only in covered dispensers or in containers or wrapped packages for individual service. (It is recommended that containers so designed that a spoon cannot be inserted be used for dispensing these materials.)

(3) All unwrapped or unenclosed food, meat, confection, or drink on display are protected by glass or otherwise from public handling or other contamination, except that approved hand openings for self-service may be permitted on counter fronts.

(4) No animals, pets or fowl are kept or allowed in any room in which food, meat, confection, drink or ingredients thereof are prepared, sold, served or stored.

(5) Harborages and potential breeding places for rodents have been eliminated or the premises ratproofed and rodents eliminated.

(6) All supplementary means necessary for the elimination of insects, vermin and rodents are employed.

(7) All poisonous compounds used in extermination of rodents or insects are so marked as to be easily identified and so stored and used as to prevent any possible contact which would permit contamination of food, meat, confection, drink, or ingredients thereof.

Item 16. Cleanliness of Employees: All employees shall wear clean outer garments, including head covering; shall be of a clean, neat personal appearance; shall be free of contagious disease; of open wounds; and shall keep their hands clean at all times while engaged in preparing, offering for sale, serving, storing, or otherwise handling any food, meat, confection, drink, ingredients thereof, utensils or equipment. Employees shall not expectorate or use tobacco in any form in the room in which food is prepared.

Public Health Reason:

The likelihood of possible contamination of food, meat, confection, drink, ingredients, utensils, or equipment is materially reduced if all employees who prepare, offer for sale, serve or store such items wear clean outer garments, including head coverings, are healthy, are of neat personal appearance, and have clean hands.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) The outer garments of all persons, including dishwashers, who are engaged in preparing, selling, serving, or storing of food, meat, confection, or utensils are reasonably clean and are used for no other purpose than working clothes.

Clean uniforms, coats or aprons which are readily washable are considered satisfactory. Washable caps or hairnets are worn by employees.

(2) The hands of all persons are kept clean while engaged in preparing, selling, serving or storing of food, meat, confection, drink, utensils or equipment.

(3) All employees are free from communicable disease or open lesions or wounds (a health card is available on each employee).

(4) There is no evidence of spitting or of the use of any form of tobacco by employees in rooms in which food is prepared.

Item 17. Miscellaneous: The premises, inside and outside, of any establishment covered by these regulations shall be kept clean, neat, and free from litter or rubbish. Any room or rooms which are used as living or sleeping quarters for humans, animals or fowl shall be completely separated from the room or rooms in which food, meat, confection or drink are prepared, offered for sale, served, stored, and prepared for sale elsewhere or in which utensils are washed or stored. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean.

Soiled linens, coats, aprons, clothes, and cloths shall be kept in covered containers provided and used only for this purpose.

Hand washing signs shall be posted in all toilet rooms and other rooms in which food, meat, confection or drink is prepared, offered for sale, served, stored, or prepared for sale elsewhere, or in which utensils are washed or stored.

Public Health Reason:

Clean surroundings and good sanitation practices promote cleanliness.

Satisfactory Compliance: This item shall be deemed to have been satisfied if:

(1) The premises, inside and outside, including all equipment not covered under Item 10, are clean and free of litter and rubbish, the disposal of which is provided in Item 12. The storage of all utensils, equipment and supplies is neat and orderly.

(2) There is complete separation of the room or rooms which are used for living or sleeping quarters or other non-food handling domestic activities of humans, animals or fowl from other rooms in which food, meat, confection, drink, ingredients, utensils, or equipment are prepared, offered for sale, served, washed, stored, or prepared for sale elsewhere.

(3) Dressing rooms or lockers are not located in the kitchen or other rooms in which food, meat, confection, or drink is prepared, offered for sale, served, prepared for sale elsewhere, or in which utensils are washed or stored.

(4) Covered containers are provided for soiled linens, coats, aprons, clothes and cloths and these containers are used for no other purpose.

(5) Hand washing signs, furnished by the health officer, are conspicuously posted in toilet rooms as well as in other rooms in which food, meat, confection or drink is prepared,

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offered for sale, served, stored, or prepared for sale elsewhere and in which utensils are washed or stored.

(6) In school lunch units, gymnasiums and similar rooms are not used for dining or serving rooms.

Grade "B" Eating and Drinking Establishments, and Other Retail Food Establishments:

Grade "B" eating and drinking establishments and other retail food establishments are those which fail to comply with Items 1, 2, 4, 5, or 17, but which conform to all other items of sanitation required for Grade "A" eating and drinking establishments and other retail food establishments.

Grade "C" Eating and Drinking Establishments and Other Retail Food Establishments:

Grade "C" eating and drinking establishments and other retail food establishments are those which fail to comply with either the Grade "A" or Grade "B" requirements.

Itinerant Eating and Drinking or Other Retail Food Establishments:

A person conducting an itinerant eating and drinking or other retail food establishment may, in the discretion of the health officer, be exempted from the requirements of securing a permit. The health officer should approve an itinerant eating and drinking, or other retail food establishment, only if it complies with the following requirements of sanitation:

It shall be located in proper surroundings and kept in a clean and sanitary condition. It shall be so constructed and arranged that food, meat, confection, drink, utensils, and equipment will not be exposed to insects or to dust or other contamination. Only food and drink which is clean, wholesome and free from adulteration shall be sold or served. An adequate supply of water of safe sanitary quality shall be easily available and used for drinking and for cleaning utensils and equipment. If multi-use utensils are used in the serving of food or drink, they shall be thoroughly washed with hot water and a satisfactory detergent, rinsed and disinfected after each use, as provided for in Item 10, Section 5, and so handled and kept as to be protected from contamination. Adequate provision shall be made for refrigeration of perishable food, meat, confection and drink. Ice used in or with food, meat, confection, or drink, shall be from a source approved by the health officer and so handled as to avoid contamination. In the event the establishment does not comply with the provisions of this paragraph, only single service containers shall be used.

Garbage and refuse shall be kept in tightly covered, water-tight containers until removed and shall be disposed of in a place and manner approved by the health officer. Dish-water and other liquid wastes shall be so disposed of as not to create a nuisance.

No person suffering from any disease transmissible by contact or through food, meat, confection or drink, or who is a known carrier of the germs of such a disease shall be employed in any capacity. Adequate and satisfactory toilet and hand washing facilities shall be readily accessible to employees. No person engaged in the handling or serving of food, meat, confection, or drink shall return to his work, after using the toilet, without first thoroughly washing his hands.

Upon failure of any person maintaining or operating an itinerant eating and drinking, or other retail food establishment, after warning, to comply with any of these requirements, it shall be the duty of the health officer summarily to forbid the further sale or serving of food, meat, confection, or drink therein. Any person continuing to sell or serve food, meat, confection or drink in such an eating and drinking, or other retail food establishment after being so forbidden, shall be subject to the penalties provided for violation of these rules and regulations and the laws of the State of South Carolina.

Section 7. Grades of Eating and Drinking Establishments or Other Retail Food Establishments Which May Operate:

No eating and drinking establishment or other retail establishments shall be operated within the State unless it conforms with Grade "A", Grade "B", or approved itinerant eating and drinking establishments or other retail food establishment requirements of these rules and regulations.

When any eating and drinking establishment or other retail food establishment fails to qualify for any of the grades in these regulations, the health officer is authorized to revoke the permit or in lieu thereof degrade the eating and drinking establishment or other retail food establishment, and permit its operation during a temporary period not exceeding 30 days.

Section 8. Reinstatement of Permit (Supplementary Regrading):

Any eating and drinking establishment or other retail food establishment, the grade of which has been lowered and all grade displays have been changed accordingly, or the permit of which has been suspended may at any time make application for regrading or the reinstatement of the permit.

Within one week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant to the effect that the violated item or items of the specifications have been conformed with, the health officer shall make a reinspection, and thereafter as many reinspections as he may deem necessary to assure himself that the ap-

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plicant is again complying with the higher grade requirements and, in case the findings indicate compliance, shall award the higher grade or reinstate the permit.

Section 9. Disease Control:

No person who is affected with any disease in a communicable form or is a carrier of such disease shall work in any eating and drinking establishment or other retail food establishment, and no eating and drinking establishment or other retail food establishment shall employ any such person or any person suspected of being affected with any disease in a communicable form or of being a carrier of such diseases.

Notice shall be sent to the health officer immediately by the eating and drinking establishment or other retail food establishment manager, or by the employee concerned if he or any employee contracts any infectious, contagious, or communicable disease, or has a fever, a skin eruption, a cough lasting more than three weeks, or any other suspicious symptom. It shall be the duty of any such employee to notify the eating and drinking establishment or other retail food establishment manager immediately when any of these conditions obtain, and if neither the manager nor the employee concerned notifies the health officer immediately when any of said conditions obtain they shall be held jointly and severally to have violated this section. A placard containing this section shall be posted in all toilet rooms.

Section 10. Procedure When Infection Suspected:

When suspicion arises as to the possibility of transmission of infection from any eating and drinking establishment or other retail food establishment employee, the health officer is authorized to require any or all of the following measures: (1) the immediate exclusion of the employee from all eating and drinking establishments or other retail food establishments—(2) the immediate closing of the eating and drinking establishment or other retail food establishment concerned until no further danger of disease outbreak exists, in the opinion of the health officer—(3) adequate medical examinations of the employee and his associates, with such laboratory examination as may be indicated.

Section 11. Enforcement Interpretation:

These rules and regulations are issued under the authority of Section 32-8, Code of Laws, 1952, and subsequent legislation. They shall be enforced by the health officer, in accordance with interpretations and public health reasons approved by the State Board of Health.

Section 12. Penalties:

Violation of these rules and regulations shall be punishable in accordance with Section 32-17, Code of Laws of South Carolina, 1952, by fine not exceeding \$100.00 or imprisonment not exceeding 30 days; and each day of continued violation shall be a separate offense.

Section 13.

All rules and regulations governing restaurants, markets, locker plants and school lunch rooms, previously adopted by the State Board of Health are hereby revoked.

Hospitals, Licensing of.

GENERAL HOSPITALS, SPECIALIZED HOSPITALS AND OTHER INSTITUTIONS.

Pursuant to § 32-792, S. C. Code of 1952.

(Filed Secretary of State's office June 23, 1953.)

DEFINITIONS, CLASSIFICATIONS, AND INTERPRETATIONS

(A) LICENSEE:

The licensee is the officer or member of staff or governing body on whom rests the responsibility for maintaining approved standards for the institution.

(B) LICENSE NOT REQUIRED FOR:

1. Any institution which is regularly licensed by the South Carolina Mental Health Commission. (Act 836 of the Acts and Joint Resolutions of South Carolina—Regular Session of 1952.) The above Act states in part, "It shall have charge of all State mental health facilities and shall have sole charge of the regulation, licensing and inspection of all hospitals or other institutions in this State so far as they are equipped to provide in-patient care, treatment, or training for the mentally ill, mentally defective, epileptic, senile, drug addicted, or alcoholic."

2. Privately owned educational institutions maintaining infirmaries for the exclusive use of their student bodies (Act 98 of the Acts and Joint Resolutions of South Carolina—Regular Session of 1951) as hereinafter defined.

(C) DEFINITIONS:

For the purposes of these Standards the following definitions shall apply:

1. Attic: The term "attic" when used in these standards, shall mean the space between the finished ceiling of the top habitable story and the roof sheathing or decking.

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2. Automatic Sprinkler System: The term "automatic sprinkler system" shall mean an arrangement of piping and sprinklers designed to operate automatically by the heat of fire and to discharge water upon the fire.

3. Basement: The term "basement" shall mean that portion of the building partly underground but having less than half its clear height below the average grade of the adjoining ground.

4. Existing Institutions: An "existing institution" is one which was in operation and/or one which began the construction or renovation of a building, for the purpose of operating the institution, prior to May 11, 1952.

5. Exit: The term "exit" shall mean the exit doorway or doorways, or such doorways together with connecting hallways or stairways, either interior or exterior, or fire escapes, designed to provide means by which individuals may proceed safely from a room or space to a street or to an open space which provides safe access to a street.

6. Fire-Resistance Rating: The term "fire-resistance rating" shall mean the time in hours or fractions thereof that materials or their assemblies will resist fire exposure as determined by fire tests conducted in compliance with recognized standards.

7. First Floor: The term "first floor" shall be that story which is of such height above grade that it does not come within the definition of a basement or shall be that story located immediately above a basement.

8. New Institutions: A "new institution" is one which began operation and/or one which began construction or renovation of a building, for the purpose of operating the institution, on May 11, 1952, or any date thereafter. The Licensing Standards governing new institutions apply if and when a hospital or related institution proposes to begin operation in a building not previously and continuously occupied by an institution licensed under these regulations.

9. Patient: The term "patient" shall mean any individual admitted to an institution for diagnosis, treatment and/or care.

10. Privately Owned Educational Institutions: The term "privately owned educational institutions" within the scope of the Licensing Standards is defined as privately owned college infirmaries.

11. Story. The term "story" shall mean that portion of a building included between the upper surface of any floor and the upper surface of the floor next above. For the purpose of these standards, this definition does not apply to basements.

12. Types of Construction:

Type I—Fireproof Construction: Fireproof construction is that in which all exterior walls are of masonry or reinforced concrete or of other approved materials or combinations of materials and in which all the structural members are of non-combustible materials and provide fire resistance not less than hereinafter specified.

Type II—Fire Resistive Construction: Fire resistive construction is that in which all exterior walls are of masonry or reinforced concrete or of other approved materials or combinations of materials and in which all the structural members are of non-combustible materials and provide fire resistance not less than hereinafter specified.

Type III—Heavy Timber Construction: Heavy timber construction is that in which all exterior walls are of masonry or reinforced concrete or of other approved materials or combinations of materials that provide fire resistance not less than hereinafter specified and in which all structural members are of heavy timber or are in part protected steel or reinforced concrete of fire resistance not less than hereinafter specified. There shall be no concealed space within the combustible member of heavy timber construction.

Type IV—Non-Combustible Frame Construction: Non-combustible frame construction is that in which all structural members, including wall framing, floors, roofs and their supports, shall be of steel, iron or other metal or of other non-combustible materials and in which the exterior surface of the building is of steel, iron or other metal or of asbestos, masonry, reinforced concrete or other non-combustible materials.

Type V—Ordinary Construction: Ordinary construction is that construction not meeting the requirements of Type III but in which the exterior walls are of masonry or reinforced concrete or of approved materials or assembly of materials that provide fire resistance as required hereinafter and in which the interior framing is partially or wholly or of unprotected wood or of unprotected iron or steel except that fire protection shall be provided as hereinafter specified.

Type VI—Wood Frame Construction: Wood frame construction is that in which the enclosing walls are of wood or other combustible materials including construction having exterior masonry veneer, stucco, or metal which is dependent upon wood for support, stability, or rigidity and in which interior framing is of wood or other combustible materials.

(D) SEPARATE LICENSES:

Separate licenses are required for institutions maintained on separate premises, even though they are operated under the same management; provided, however, that separate licenses are not required for separate buildings on the same site.

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(E) CLASSIFICATION OF INSTITUTIONS:

For the purpose of administering the hospital licensing law, all institutions subject to licensure shall be classified in the following manner:

1. General Hospital: A "general hospital" is an institution providing facilities for diagnosis, treatment and care for two or more non-related persons requiring either medical, or surgical attention, or both. The term "general hospital" includes specialized hospitals or other institutions which provide one or more of the facilities or services furnished by a general hospital.

2. Maternity Hospital: A "maternity hospital" is an institution that receives only patients for pre-natal and/or post-natal care and treatment or for delivery.

3. Chronic and Convalescent Hospital: A "chronic and convalescent hospital" is an institution which provides services necessary for the care of persons who are suffering from chronic illness or physical infirmities, or who are convalescent from acute illness, but who are not in need of technical or professional services which are ordinarily available in general or specialized hospitals. Such services include any or all procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside care, application of dressings and bandages and carrying out of treatments prescribed by a practitioner of the healing arts licensed by the State of South Carolina. The individual patient, his condition, his diagnosis, and the prescribed plan for his care and treatment as outlined by the physician are factors which determine the type of services which will be provided. This category of hospitals is not limited to patients of any age group. Because of the services offered by the institutions, and because of the concentration of the aged persons in them, the following conditions are most common: Cardiac diseases, arteriosclerosis, hemiplegia, arthritis, carcinoma, general infirmities of old age, and convalescent stages of acute illness.

4. Nursing Home: A "nursing home" is an institution, however named, whether operated for profit or not, which is advertised, announced, or maintained for the express or implied purpose of providing care for two or more non-related persons, any one of whom because of infirmity require more services than board, room and laundry. Institutions providing no care other than special diets, medications which can be safely self-administered, or a minimum amount of personal attention are not subject to the Licensing Law. This type institution will provide care and treatment only to patients that do not need technical or professional services which are ordinarily available in general or specialized hospitals.

5. Institutional Infirmary: An "institutional infirmary" is a hospital or place which provides care for two or more non-related students or inmates. Institutions providing no care other than special diets, medications which can be safely self-administered, or a minimum amount of personal attention, are not subject to the Licensing Law.

(F) POSTING OF LICENSE:

The license shall be posted in a conspicuous place in a public lobby or waiting room of the institution.

(G) EFFECTIVE DATE AND TERM OF LICENSE:

A license shall be effective for a 12-month period beginning July 1 of each year and ending June 30 of the succeeding year; provided, however, that a hospital which has not been inspected during that year may continue to operate under its existing license until such time as an inspection is made.

(H) COMPLIANCE:

No license will be issued to a new institution as herein defined under "New Institutions" until the licensee has complied with Part I, Chapters 1 through 8, inclusive of the Licensing Standards set forth hereinafter.

(I) NON-COMPLIANCE:

No license will be renewed if any item of non-compliance appears on two successive inspection reports unless a hearing of the case has been requested and held before the Hospital Advisory Council Licensing Committee and a report of their findings has been reviewed by the State Board of Health.

(J) TYPES OF LICENSES:

The following types of licenses will be issued, based on the class of construction:

Class I—To institutions that have complied with Chapter 2 of these standards (Fire Protection) and are not in violation of paragraph (I) "Non-Compliance," cited above.

Class II—To institutions that do not meet the requirements of Section 202.2 of Chapter 2 (Fire Protection); provided, however, they have installed approved automatic sprinkler heads in vertical openings, such as elevator and dumb-waiter shafts, laundry chutes, and stairways prior to May 10, 1952; and provided further that they are not in conflict with paragraph (I) "Non-Compliance" cited above.

Class III—To institutions that have not met the fire protection requirements of Section 202.2, Chapter 2 of these Standards; provided, however, they are not in conflict with paragraph (I) "Non-Compliance" cited above.

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PART I—PHYSICAL PLANT

CHAPTER 1. DESIGN AND CONSTRUCTION

(*)Section 101. General:

Every institution must be planned, organized, equipped, manned and administered so as to furnish adequate care and treatment for each class of persons which it receives. The physical plant must be adapted to the services to be performed.

(*)Section 102. Local Codes and Standards:

All hospitals shall comply with all local and state laws, standards, codes, or ordinances applicable or pertinent to the construction and/or operation of a hospital that are not inconsistent with the provisions of Section 32-780 through 32-795, inclusive, South Carolina Code of 1952. The State Board of Health has used as its basic codes the Southern Standard Building Code, 1953 Revision; the Building Exits Code, 1952 Edition; and the National Electrical Code, 1951 Edition. Buildings designed in accordance with the above mentioned codes will be acceptable to the State Board of Health, provided, however, that the minimum requirements as set forth in these standards are met. Structural members shall be designed in accordance with the Southern Standard Building Code, 1953 Edition.

(*)Section 103. Exceptions to These Standards:

The State Board of Health reserves the right to make exceptions to these standards as applied to existing institutions where it is determined that the health and welfare of the community requires the services of the existing institution. However, every effort must be made by owners of and/or operators of all sub-standard institutions to make all changes and alterations necessary to meet the minimum standards.

(*)Section 104. Submission of Plans and Specifications:

It is required that when construction is contemplated either for new buildings, additions, or material alterations to existing buildings, plans and specifications be submitted in duplicate to the South Carolina State Board of Health for review. This submission shall be made in two stages; preliminary and final. All plans should be drawn to scale with the title and date shown thereon. After they have been reviewed, one copy will be returned to the applicant with comments and construction work shall not be started until approval has been received from the State Board of Health. Any deviation from these documents shall have prior approval in writing. In the case of institutions designed to accommodate ten (10) patients or less in a one-story building, only the preliminary stage will be required. For institutions designed to accommodate eleven (11) patients or more, both stages must be submitted. These shall be prepared by an architect or engineer registered in the State of South Carolina and shall bear his seal. In cases where one-story buildings are being converted with no major alterations or additions for institutional purposes to admit a total of ten (10) patients or less, no plans or specifications are required.

(a) Preliminary stage, where required, shall include the following:

1. Plot plan showing size and shape of entire site; location of proposed building with any existing structures; adjacent streets, highways, sidewalks, railroads, etc., properly designated; size, characteristics and location of all existing public utilities.
2. Floor plans showing over-all dimensions of buildings; location, size and purpose of all rooms; location and size of all doors, windows, and other openings with swing of doors properly indicated; location of stairs, elevators, dumbwaiters, vertical shafts and chimneys.
3. Outline specifications listing the kind and type of materials.

(b) Final stage, where required, shall include the following:

Complete working drawings and contract specifications including layouts for plumbing, heating, ventilation and electrical work.

(c) In construction delayed for a period exceeding six months from the time of review of Final, or Preliminary stage, where applicable, a new evaluation and/or approval is required.

(*)Section 105. Location (New Institutions):

105.1 Environment: All hospitals shall be so located that they are free from undue noises, smoke, dust or foul odors and shall not be located adjacent to railroads, freight yards, main traffic arteries, schools, children's playgrounds, airports, industrial plants or disposal plants.

105.2 Zoning Restrictions: The location of an institution shall comply with local zoning and fire zoning ordinances.

105.3 Transportation: Institutions located in rural areas must be served by good roads, which can be kept passable at all times.

105.4 Communication: There must be a telephone in the building and additional telephones or extensions, as required to summon help in case of fire or other emergency.

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CHAPTER 2. FIRE PROTECTION

(*)Section 201. Height and Area Limitations:

201.1 New Institutions: In buildings to be occupied by new institutions the following table of allowable heights and areas, as recommended by the Southern Building Code Congress, shall not be exceeded:

HEIGHT AND AREA LIMITATIONS

Type of Construction	Allowable Story Height	Allowable Area Per Floor (Sq. Ft.)		
		One Story	Two Stories	Over Two Stories
Type I, Fireproof	No limit	No limit	No limit	No limit
Type II, Fire Resistive	80 ft.	No limit	No limit	No limit
Type III, Heavy Timber	One	12,000	Not Permitted	Not Permitted
Type IV, Non-Combustible	Two	5,000	4,000	Not Permitted
Type V, Ordinary	Two	5,000	4,000	Not Permitted
Type VI, Wood Frame	One	4,000	Not Permitted	Not Permitted

Note: At least one hour fire-resistive construction shall be provided throughout all buildings except as hereinafter provided. For buildings sprinklered throughout, the allowable areas may be increased 100%, provided, however, that such sprinkler system, in whole or in part, is not a requirement of these standards.

201.2 Existing Institutions: Existing institutions shall not be altered, remodeled, or enlarged so as to exceed the Height and Area Limitations as set forth in Section 201.1.

(*)Section 202. Fire Resistance Rating:

202.1 New Institutions: In buildings to be occupied by new institutions, the fire resistive ratings for the various structural components shall comply with the Southern Standard Building Code, 1953 Edition, as recommended by the Southern Building Code Congress and as listed below; provided, however, that in buildings not over two stories in height, being converted for institutional purposes to admit a total of ten (10) patients or less, the following fire resistive requirements do not apply if patients are accommodated only on the first floor.

FIRE PROTECTIVE REQUIREMENTS

STRUCTURAL MEMBERS	Fire Resistive Ratings in Hours* Type of Construction					
	I	II	III	IV	V	VI
WALLS						
Party Walls	4	4	4	4	4	4
Fire Walls	4	4	4	4	4	4
Exterior Bearing	4	3	4	3	3	—
	3(1)	2(1)	3(1)	2(1)	2(1)	1
Exterior Non-Bearing	3	—	3	—	—	—
	2(1)	2	2(1)	2	2	1
Inner Court	3	2	3	2	2	1
Penthouse	3	2	3	2	2	1
PARTITIONS						
Interior Bearing	4	3	3	1	1	1
Interior Non-Bearing	1(3)	1(3)	1	1	1	1
COLUMNS						
Supporting Masonry or Bearing Walls	4	3	2	**	**	**
Supporting Roofs only	3	2	1	1	1	1
Other Columns	4	2	1	1	1	1
TRUSSES						
Supporting Masonry or Bearing Walls, Columns, Girders, Trusses	4	3	2	**	**	**
Supporting Roofs only	2	1	1	1	1	1
Other Trusses	2½	1½	1	1	1	1

NOTES:

* Not less than one hour fire resistive construction shall be provided throughout all buildings.

** Shall be of the same rating as the Masonry or Bearing Walls, Columns, Girders, or Trusses it supports.

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Supporting Masonry or Bearing Walls, Columns, Girders, Trusses	4	3	2	**	**	**
Supporting Roofs only	2	1	1	1	1	1
Other Girders	2½	1½	1	1	1	1

BEAMS

Supporting Masonry or Bearing Walls, Columns, Girders, Trusses	4	3	2	**	**	**
Supporting Roofs only	1½	1	1	1	1	1
Other Beams	2½	1½	1	1	1	1

FLOORS

Deck Construction	2½	1½	1	1	1	1
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ROOFS

Deck Construction	1½	1	1	1	1(2)	1(2)
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Vertical Openings: For buildings over two stories in height all vertical openings shall be enclosed by walls of not less than two hour fire resistive construction. For buildings two stories or under in height, all vertical openings shall be enclosed by walls of not less than one hour fire resistive construction.

Wall Openings: Wall openings shall be protected in accordance with the Southern Standard Building Code, 1953 Edition. Furnace and boiler rooms shall be separated from the remainder of the building in accordance with Section 209.1 of this Chapter.

(1) For buildings facing on a street or public place thirty feet or more in width.

(2) The ceiling underneath the roof shall be the same as required for the floors.

(3) Must be constructed of non-combustible materials.

Fire resistive ratings of various materials and assemblies shall be considered approved by the State Board of Health only after approval has been granted by the Southern Building Code Congress.

202.2 Existing Institutions: The fire resistive rating for all buildings housing existing institutions shall be one hour; provided, however, this requirement shall not apply if one or more of the following requirements are met:

(a) Equipped with a complete approved automatic sprinkler system.

(b) Housing patients only on the first floor.

Where an existing institution is substantially altered, remodeled or added to, the fire resistive ratings as set forth in Section 202.1 of this Chapter shall prevail.

(*)Section 203. Hazardous Elements of Constructions:

203.1 Chimneys: Chimneys, flues, stovepipes, breechings, etc., shall be constructed and installed in accordance with the Southern Standard Building Code, 1953 Revision.

203.2 Pipes: When steam or hot water pipes pass through walls or ceilings or are placed nearer than one (1) inch to woodwork or any other combustible materials, pipes properly supported must be protected by a suitable fire resistive shield.

203.3 Dampers: In buildings occupied by a new institution dampers with fusible links shall be installed on all heating, air-conditioning and ventilating systems as required by N.F.P.A., "Air Conditioning Systems, Warm Air Heating, Air Cooling and Ventilating Systems"—No. 90, 1950 Edition.

203.4 Incinerators in New Institutions: When incinerators are constructed as an integral part of the building, incinerators and the handling of rubbish shall conform to the requirements of "Standards for Rubbish Handling and Incinerators" of the National Fire Protection Association, Designation NFPA No. 82-A, 1948.

203.5 Incinerators In Existing Institutions: All institutions shall have incinerators approved by the South Carolina State Board of Health. These facilities shall be provided for the sanitary disposal of infected dressings, surgical and obstetrical wastes and similar materials.

(*)Section 204. Fire Fighting Apparatus:

204.1 Standpipes, Sprinklers, Extinguishers: Fire-fighting equipment, such as standpipes and sprinklers, shall be provided as required by the Southern Standard Building Code, 1953 Edition. In addition to such equipment there shall be at least one piece of first aid equipment, such as a portable fire extinguisher, on each floor of every building. Such first aid extinguishers shall be so located that a person will not have to travel more than 50 feet from any point to reach an extinguisher. Extinguishers shall be hung in public hallways or corridors and at a height that is convenient for ready access and use. Suitable fire extinguishers shall be installed in the following hazardous areas: kitchen, laboratory, X-Ray, laundry, operating and delivery suites, and furnace rooms.

204.2 Test and Inspections: All standpipes, hose, sprinkler systems, and other fire-fighting equipment shall be inspected and tested at least once each year and more often if necessary to

maintain it in serviceable condition. In the case of fire extinguishers, they shall be refilled when necessary and kept in condition for instant use. A tag indicating the date of last inspection shall be attached to each extinguisher.

204.3 Fire Drills: All employees shall be made familiar with the locations of fire-fighting equipment and instructed in its use. It is recommended that there be a fire drill of employees every six months, including the turning in of alarms, simulated evacuation of patients and other occupants, and use of equipment.

204.4 Proximity to Fire Station: Where a hospital or related institution is located outside of the service area or range of the public fire protection, arrangements shall be made to have the nearest fire department respond in case of a fire.

204.5 Alarms: A telephone or other suitable alarm-sending device shall be provided as a means of communicating an alarm of fire to the fire department. Pay station telephones will not be approved for this purpose.

(*) Section 205. Exits:

205.1 Location and Number: In all buildings occupied by existing institutions, there shall be more than one exit leading to the outside of the building from each floor including the basement. In buildings occupied by new institutions exits shall be placed so that the entrance door of every private room and every point in open wards, day rooms, dormitories and dining rooms shall be not more than 100 feet (along the line of travel) from the nearest exit; in buildings equipped with automatic sprinklers this distance may be 150 feet. Exits shall be remote from each other and shall be arranged with regard to floors so that there are no pockets or deadends of appreciable length in which occupants may be trapped.

205.2 Enclosed Exits: In buildings occupied by existing institutions in which patients are housed on two stories or more above the ground, enclosed exits of one hour fire resistive construction from each floor are required. This requirement does not apply if in lieu of enclosing the stairways the applicant complies with alternates (a) or (b):

- (a) That the stair be protected with automatic sprinkler heads installed within the enclosure, or
- (b) That there be a sufficient number of exits so that in case of a fire patients could be evacuated without having to use or cross any one exit.

205.3 Outside Stairs (For Existing Institutions): All outside stairs used as fire exits must reach the ground and shall be provided with handrails. Stairs installed on existing institutions shall be at least 36" wide. A width of 22" will be acceptable for stairs already in place. The pitch of stairs shall not exceed 45 degrees. Rise shall not exceed nine inches and tread shall not be less than nine inches, exclusive of nosing. Extension from the top floor to the roof of the building can be of steel ladder type, properly anchored.

205.4 Interior Stairways: In buildings to be occupied by new institutions exit stairs shall conform to the requirements of the Building Exit Code, 1952 Edition, of the National Fire Protection Association. In buildings occupied by existing institutions interior stairways shall be of sufficient width to permit easy evacuation of patients.

205.5 Exit Door Swing and Latches: (a) The exit doors required from each floor shall swing in the direction of exit travel when making egress from the building. (b) All required outside exit doors shall be equipped with latches which may be opened readily from the inside without the use of keys or any special knowledge or effort.

205.6 Doors from Patient Areas and Exit Doors:

(a) New Institutions:

1. All doors to patient areas and all exit doors shall be not less than 44" in width, or of sufficient additional width to permit the passage of beds with any attached medical apparatus necessary to sustain life.
2. All doorways from patient or resident-occupied rooms and in egress passages to the outside of the building shall be at least 78" in height and of such greater height as will allow for free passage of beds and attached medical equipment where required.
3. Doors from patient rooms and wards shall be equipped with a latch which may be opened from either side without the use of a key or any special knowledge or effort.
4. All patient rooms shall be connected directly to a corridor or an outside exit.
5. In buildings that are being converted for institutional purposes in which no patients are to be housed above the first floor, requirements numbers one and two above do not apply. All doors and corridors in such buildings shall be of sufficient width to allow the free removal of patients.

(b) Existing Institutions:

1. All doors to patient areas and all exit doors shall be of sufficient width to permit free passage of patients, personnel or medical equipment where required.

205.7 Corridor Obstructions: Halls, corridors and all other means of egress from the building shall be maintained clear and free of obstructions.

205.8 Corridor Width: Corridors and passageways from patient or resident-occupied rooms leading to egress stairways and/or to the outside from the first story and to areas of refuge

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shall be not less than 72 inches in width in new buildings or additions to existing buildings, and not less than 36 inches in existing institutions, and shall be of such greater width as is necessary for free passage of beds with patients to the outside or to an approved area of refuge.

205.9 Corridor Height: Corridors and passageways considered as approved means of egress shall be at least 84 inches in height in new construction.

205.10 Exit Signs: In buildings to be occupied by new institutions exits shall be marked with approved illuminated signs bearing the word "EXIT" or "FIRE ESCAPE" in letters at least four inches high. Exit signs shall be illuminated at all times AND SERVICED AND CONTROLLED DIRECTLY FROM THE ELECTRICAL PANEL. In buildings occupied by existing institutions with all patients on the ground floor or with all patients ambulatory, illuminated exit signs will be required only if deemed necessary by the South Carolina State Board of Health. The reflector type exit signs may be approved in "existing institutions."

205.11 Hallway and Stairway Illumination: All hallways, stairs, and other means of egress shall be adequately lighted at all times.

205.12 Ramps: In buildings to be occupied by new institutions exterior ramps with a slope of not more than one in eight shall be installed from the first floor to the grade to serve all portions of the building where patients are or may be placed. All ramps shall be provided with handrails. The width of all ramps shall be not less than four feet clear of all obstructions except handrails.

205.13 Additional Exits and Protection: Where greater than normal fire or other hazard exists additional exit facilities, ramps, fire separations, enclosures, etc., may be required to the extent that reasonable fire safety is provided.

205.14 Smoke Barriers: In buildings to be occupied by new institutions, no more than 150 feet of corridor without barrier against the passage of smoke shall be permitted.

205.15 Fire Wall: An addition shall be separated from an existing building by a fire wall having a fire resistive rating equal to the maximum of any portion of the existing building or the addition, unless the addition is of equal rating and provided the area limitations in Section 201.1 are not exceeded.

(*)Section 206. Existing Multi-Storied Buildings Occupied by Staff Personnel:

Multi-storied hospitals or related institutions housing personnel above the ground floor will be subject to the provisions of the regulations governing the fire protection sections of the prevailing Licensing Standards; provided, however, that the requirement regarding stairs (Section 205.1 and 205.2) will not apply to floors occupied solely by personnel and containing no facilities such as dining rooms, treatment rooms, et cetera, used by patients.

(*)Section 207. Vertical Openings and Shafts:

207.1 Existing Institutions: Vertical openings, in buildings, occupied by existing institutions, such as elevator and dumb-waiter shafts, laundry chutes, et cetera, shall be lined with and enclosed with fire resistive materials having a rating of one hour or be equipped with automatic sprinkler heads.

207.2 New Institutions: Vertical openings in buildings to be occupied by new institutions shall be enclosed and shall comply with Section 202.1.

(*)Section 208. Attic Areas:

All openings into attic areas shall be protected by materials consistent with the building construction or be equipped with a standard automatic sprinkler system.

(*)Section 209. Furnace Rooms and Heating Devices:

209.1 Fire Resistance Rating: (a) Heating, boiler and furnace rooms shall be separated from other parts of the building by construction having a fire resistive rating of not less than one hour. This regulation does not apply where the heating unit is a warm air furnace, except that no combustible construction shall be subjected to temperatures exceeding 160 degrees Fahrenheit and/or which is considered safe by the South Carolina State Board of Health.

(b) In buildings to be occupied by new institutions, boiler rooms housing one or more steam boilers carrying more than 15 pounds pressure shall be separated from the rest of the building by construction having a fire resistive rating of not less than two hours and shall have an exit or exitway leading to an opening directly to an alley, street, or exterior court. Interior door openings must be protected by approved fire doors.

209.2 Air Inlet: A fresh air inlet vent shall be provided from the boiler or furnace room directly to the outside of the building.

209.3 Existing Institutions: For buildings occupied by existing institutions with 25 beds or less the ABOVE requirements of this Section may be waived if no undue hazards exist and where adequate fire fighting equipment and methods of evacuating patients exist.

209.4 Gas Fired Appliances: Gas fired hot plates, ranges, heaters, and other appliances (except Bunsen burners) may be used where no hazard is created but must be serviced with rigid pipe connections.

209.5 Heater Installation: Combustible floors under all heaters shall be protected by asbestos covered with metal or a similar protection. No heaters shall be located less than 18" from combustible walls or ceilings unless properly insulated and protected.

209.6 Fuel Oil Storage Tanks: Fuel oil storage tanks constructed as an integral part of the heater shall not exceed six gallons in capacity. Fuel oil storage tanks not integral with the heater shall be properly vented as recommended by the National Fire Protection Association, Vol. 1, 1951 Edition.

209.7 Hoods, Vents, Ducts: Hoods, vents, and ducts from heating equipment, cook stoves, water heaters, sterilizing machines, ranges, et cetera, shall be installed in accordance with best practices to eliminate hazards and provide proper ventilation. Hoods and vents installed over cook stoves and ranges shall be maintained clean and free of grease accumulation at all times and shall be equipped with a fusible link damper unless a carbon dioxide fire extinguisher is located in the immediate area.

209.8 Liquefied Petroleum Gas: Liquefied petroleum gas shall be used only when installed in accordance with the Liquefied Petroleum Regulations of this State.

(*)Section 210. Electrical Equipment:

210.1 Installation: All electrical wiring and installations shall be installed in accordance with the provisions of the National Electrical Code, 1951 Edition, as recommended by the National Fire Protection Association.

210.2 Hazards: Electric lamps and other appliances in closets or other confined locations shall be protected by wire guards if near woodwork, paper, clothing or other combustible material.

Section 211. Special Hazards:

211.1 Film Storage:

(a) Storage and handling of other than approved safety film shall be in accordance with the National Board of Fire Underwriters' "Standards for Photographic X-ray Films, No. 41."

(b) When approved acetate base safety film is used, metal safety cabinets and film storage vaults are not required.

211.2 Anesthesia—Handling and Storage:

(a) Combustible anesthetic gases and oxygen equipment used in hospitals shall be installed and maintained in accordance with the following: Storage rooms for anesthetic gases and oxygen shall be properly vented from the bottom by means of a fixed opening near the floor and another sufficiently above floor level to promote good circulation, and shall not be heated. Flammable liquids and gases shall not be stored in the same room with oxidizing gases. Gas Machines shall be inspected at regular intervals and maintained in a satisfactory condition; special precautions shall be taken to assure cleanliness in handling of all gases under pressure.

(b) In institutions having piped-in oxygen such systems shall be installed in accordance with "Recommended Safe Practices for Hospital Operating Rooms" NFPA.

(*)211.3 Outside Areas: All outside areas, grounds, and/or adjacent buildings shall be kept free of rubbish, grass, and weeds that may serve as a fire hazard.

(*)211.4 Flammable Liquids: The storage of flammable liquids including gasoline, paints, oils, et cetera, is prohibited in hospital buildings unless stored in approved metal cabinets well ventilated at top and bottom, or in fire resistive rooms.

(*)211.5 Basements, Storerooms, Attics: When basements, storerooms, or attics are used for storage of combustible materials such as mattresses, bedding, furniture, et cetera, they shall be kept free of all trash, papers, old cloths, boxes and all highly combustible materials. Such storage space shall be kept clean and orderly at all times. Mattresses should be stored in a small pile with sufficient space for access to all sides. In new institutions sprinkler heads supplied by domestic water lines shall be installed in these areas.

(*)211.6 Rubbish Disposal: Rubbish disposal shall be in accordance with local requirements.

211.7 X-ray and Radioactive Isotope Protection: Adequate protection against X-ray and/or radioactive isotope radiation shall be provided in accordance with the recommendations of the National Bureau of Standards Handbook No. 41, "Medical X-ray Protection up to Two Million Volts," and Handbook No. 42, "Safe Handling of Radioactive Isotopes."

(*)Section 212. Anesthetizing Locations:

212.1 Explosion Proof Installations:

(a) All electrical lighting fixtures and convenience outlets located below a level five feet from the surgery floor shall be of the explosion proof type as approved by the Underwriters' Laboratory for use in hazardous locations. The hazardous area may be considered as extending for a height of five feet above the floor.

(b) Open gas flames, electrical heating elements, portable electric heaters and similar devices not of the type approved for use in hazardous locations shall not be used in rooms subjected to combustible anesthetics or other hazardous locations.

(c) In buildings to be occupied by new institutions conductive floors are required in hazardous areas and shall be in compliance with the National Fire Protection Association's Bulletin, No. 56, 1952 Edition.

212.2 Heating: Heating in surgeries and similar rooms shall be by steam, hot water or some other method which would not contribute to the ignition of combustible anesthetics.

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212.3 High Frequency Electrical Apparatus: Every effort shall be made to prevent the use of open lights of any description, radio knives, high frequency electrical apparatus, live cauteries or any other source of ignition in the vicinity of combustible anesthetics.

212.4 Smoking: Smoking is prohibited in surgical and delivery suites or similar hazardous areas (except in locker rooms) or within ten feet of the doorway of any room in which combustible anesthetics are being used or stored.

(*)Section 213. Transoms:

213.1 New Institutions: Transoms and other similar openings in corridors or passageways shall not be allowed in buildings to be occupied by new institutions.

213.2 Existing Institutions: Transoms and like openings in corridors or passageways shall be permanently sealed in buildings occupied by existing institutions.

(*)Section 214. General Fire Prevention Practices:

CONDITIONS ARISING WHICH HAVE NOT BEEN COVERED IN THE FIRE PROTECTION REGULATIONS, CHAPTER 2, SHALL BE HANDLED IN ACCORDANCE WITH THE BEST FIRE PREVENTION PRACTICES AS INTERPRETED BY THE SOUTH CAROLINA STATE BOARD OF HEALTH.

CHAPTER 3. ACCOMMODATIONS FOR PATIENTS

Section 301. Rooms:

(*)301.1 General: Patient's room shall be interpreted as an area enclosed by four ceiling high walls. In buildings to be occupied by new institutions each patient's room shall communicate directly with a corridor without passage through another patient's room or have an outside exit. No room in basements shall be used for patients unless its floor is above the surrounding grade. Each patient's room shall be an outside room.

(*)301.2 Floor Area:

(a) No hospital shall have in use more beds than the number stated in the application for license except in case of justified emergency.

(b) Beds must be placed at least three feet apart.

(c) For buildings to be occupied by new institutions, the following allowance of floor space is a minimum:

Rooms for only one patient..... 100 square feet

Rooms for two or more patients..... 80 sq. ft. per bed

Rooms for two or more patients in Nursing Homes..... 70 sq. ft. per bed

301.3 Window Area: Window space shall be at least one-eighth of the floor space.

301.4 Storage Space: There shall be adequate storage space for clothing, toilet articles, and personal belongings of patients.

Section 302. Room Furnishings:

(*)302.1 General: In addition to the bed, the patient unit shall be provided with at least one chair and either a dresser or a compartment bedside table to accommodate the patient's personal possessions. A good mattress with moisture proof covering of adequate size shall be provided for each patient. Shock bed blocks or equivalent, such as pneumatic lifter, for foot of bed shall be provided in adequate numbers.

(*)302.2 Signals: There shall be an adequate method for each patient to signal aid for the services of a member of the staff. The preferred method is with a signal light over each patient's room door, control panel at nurses' station showing room or bed number, and indicators in utility room, floor kitchen, and treatment rooms.

(*)302.3 Patient Screens: All semi-private rooms and wards shall be provided with adequate cubicle curtains, portable screens, or equivalent equipment, which will completely shield each patient as needed.

302.4 Electrical Outlets:

(a) In buildings occupied by existing institutions at least one readily available convenience outlet must be provided in each room used by patients.

(*) (b) In buildings to be occupied by new institutions at least one duplex convenience outlet must be provided in each private patient room or between each two beds in larger rooms for oxygen tents, suction machines, examining lights, and similar equipment.

Section 303. Beside Equipment:

(*)303.1 Apparatus: Thermometers, emesis basis, douche apparatus, enema apparatus, urinals, mouth wash cups, bedpans and similar items of equipment coming into intimate contact with patients shall be adequately disinfected or sterilized after each use, unless individual equipment for each is provided and adequately sterilized or disinfected between patients.

(*)303.2 Solution Stands: Solution stands or attachments to the bed shall be provided for the proper administration of intravenous or subcutaneous fluids or solutions.

303.3 Oxygen: Hospitals shall provide oxygen for emergency treatment of patients.

(*)303.4 Disinfection and Room Cleaning: All bedside equipment shall be properly cleansed and disinfected and mattresses and pillows well aired and the bed remade with fresh linens before being occupied by another patient.

Section 304. Central Sterile Supply:

304.1 Controls: A recognized method of checking sterilizer performance shall be used, such as the use of a fusing control in the largest package of each load, or the bacteriological examination, at frequent intervals, of sterilized dressings. All sterilization of supplies and equipment in a hospital shall be under the direct supervision of a Registered Nurse, or a licensed Practical Nurse.

304.2 Segregation: Adequate precautions shall be taken so that sterile supplies may not be mixed with unsterile supplies.

304.3 Storage: Adequate cabinets, cupboards or other suitable enclosed spaces shall be provided for keeping equipment and supplies in a clean, convenient and orderly manner.

304.4 Containers: All containers for solution, drugs, and medicated supplies shall be plainly labeled so as to remain legible before and after sterilization.

(*)Section 305. Service Rooms:

305.1 Utensil Sanitation: There shall be satisfactory facilities for the disposal of contents of urinals and bedpans, et cetera, and for the sterilizing or disinfecting of these utensils. Bath-tubs, lavatories or sinks of any kind shall not be used for cleaning bedpans.

305.2 New Institutions: In buildings to be occupied by new institutions one linen closet, one supply closet and one utility room shall be required for each nursing unit and a floor equipment room shall be provided to accommodate wheel stretchers and wheel chairs or adequate substitute facilities must be provided. Bedpan washers and/or sterilizers shall not be in the same room with medication preparation or ice which is used for human consumption.

305.3 Exceptions: The State Board of Health will exercise its judgment in the application of this Section to institutions admitting ten (10) patients or less.

(*)Section 306. Floor, Wall and Ceiling Material:

All walls, floors and ceilings shall be constructed of and the exposed surface finished with, materials that will permit frequent cleansing or washing, or disinfection necessary for the safe care of patients, and shall be free of cracks or open spaces so as to prevent the entrance and harborage of rodents, insects, et cetera.

(*)CHAPTER 4. HEATING

The building must be equipped with a heating unit adequate to maintain a minimum temperature of 72 degrees Fahrenheit at all times in patient areas, corridors and service areas, and adequate to maintain a temperature of 80 degrees Fahrenheit in the operating rooms, nurseries, delivery rooms, recovery rooms and similar spaces.

CHAPTER 5. LIGHTING

Section 501. General:

(a) In hospitals having operating rooms and/or delivery rooms there shall be satisfactory means of illumination of the operative field as well as general illumination.

(*) (b) Adequate lighting must be provided throughout the institution.

Section 502. Emergency:

(*) 502.1 General: Emergency lighting facilities must be provided and distributed so as to be readily available to personnel on duty.

502.2 Operating and Delivery Room: Flashlight or battery operated lamps shall be in readiness at all times for use in delivery room and operating room. At no time may open flame type of light be used in these rooms.

(*) 502.3 In New Institutions Accommodating 50 or More Patients: Emergency power systems shall be provided to serve the following areas: Surgical and delivery suites, emergency rooms, corridors and exits.

(*)CHAPTER 6. VENTILATION

There shall be adequate gravity or forced ventilation of operating rooms, delivery rooms, utility rooms, X-ray rooms, kitchens, laundry, toilets and work rooms to prevent offensive odors from entering patient areas and public halls and there must be some means of preventing direct currents of cold air on patients.

CHAPTER 7. ELEVATORS

(*)Section 701. Installation:

701.1 New Institutions: In all multi-storied hospital structures, at least one elevator 5' 4" x 8' (platform dimensions) or larger shall be provided with a capacity of 3,500 pounds. Cab and shaft doors shall be not less than 3' 10" clear opening. Installations shall comply with local and state codes and the "American Standard Safety Code for Elevators, Dumb-waiters and Escalators, A 17.1—1937 with supplement A 17.3—1942."

701.2 Maintenance: Elevators in all hospitals and machinery shall be maintained, checked and kept in good condition at all times.

701.3 Safety: All elevators shall be enclosed with fireproof material having a rating of one hour and shall have an emergency signal system as well as adequate safety devices.

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CHAPTER 8. SANITATION

(*)Section 801. Water Supply:

801.1 Quality: When a municipal water supply is not available a water supply shall be provided which meets the requirements of the State Board of Health.

801.2 Distribution: Pipe sizes shall be adequate to permit an ample flow of water to the probable maximum number of fixtures which may be used at one time. The water pressure should be adequate to supply 15 pounds pressure to upper floors when the maximum number of fixtures which will be in operation at one time are supplied. If the pressure on lower floors is greater than permissible for quiet operation, reducing valves shall be employed. The water supply must be adequate.

801.3 Temperature: There shall be facilities for furnishing both hot and cold water in sufficient amounts for all purposes.

801.4 Drinking Water: Clean, sanitary drinking water shall be available and accessible in adequate amounts for all patients, employees and visitors.

801.5 Ice: At least one efficient refrigerator shall be provided on each floor. Ample supplies of ice shall be available for cooling of drinks, use in ice collars, ice packs, et cetera, on each floor. Precautions shall be maintained to prevent contamination of the ice supply in the dispensing unit.

(*)Section 802. Sewage Disposal:

Sewage shall be discharged into a municipal sewer where such a system is available; otherwise, the sewage shall be collected and disposed of in a manner which complies with the regulations of the State Board of Health.

Section 803. Plumbing:

(*)803.1 Cross Connections: Cross connections in plumbing between safe and potentially unsafe water supplies are prohibited. This refers particularly to toilets, instrument sterilizers, autoclaves, laundry fixtures, boiler rooms, bedpan washers, slop sinks, hoppers or other fixtures of similar nature. Water shall be delivered above the rim or points of overflow to each fixture, equipment or service unless protected against back siphonage by approved vacuum breakers, or other approved back flow preventers.

(*) 803.2. Drainage: The plumbing and drainage or other arrangements for the disposal of excreta and infectious discharges and household wastes, shall be in accordance with the best sanitary practice and the regulations of the State Board of Health.

(*)803.3 Valves: In buildings to be occupied by new institutions, each plumbing fixture and each piece of equipment must have stop valves to permit repairs without disrupting service to other fixtures. Each group of fixtures on a floor, each sink, each branch main, and each supply line shall be valved. This section is not applicable in new institutions housing ten (10) patients or less.

(*)803.4 Toilets: In new institutions toilets shall be provided in number ample for use according to number of patients of both sexes, and personnel of the institution. A minimum requirement is one toilet for every eight patients or residents, or fraction thereof.

803.5 Lavatories: In new institutions lavatories shall be provided in each room occupied by patients.

(*)803.6 Baths: In new institutions a bathtub or shower shall be provided in the ratio of at least one tub or shower for each twenty patients, or fraction thereof. Grab bars shall be provided.

(*)Section 804. Garbage:

804.1 Storage and Disposal: All garbage and refuse shall be deposited in suitable water-tight closed containers. These containers shall be so covered and stored as to prevent the entrance of flies and the creation of a nuisance.

804.2 Cleansing: Immediately after emptying of garbage, containers shall be properly cleansed.

(*)Section 805. Screens:

805.1 Outside Openings: All outside doors, windows and other openings shall be screened with wire screen or its equal with not less than 16 meshes per inch.

805.2 Installation: All screen doors shall be equipped with self-closing devices, and when closed fit tightly enough to prevent entrance of flies, mosquitoes and other insects. Window screens shall fit closely enough to keep out insects and be easily adjustable so that they will not serve as a block to exit in case of fire.

(*)Section 806. Handwashing:

806.1 Sterile Areas: There shall be adequate handwashing facilities equipped with proper faucets, controls and/or mixing valves located in every area where a sterile technique is required.

806.2 Service Areas: Separate handwashing facilities shall be provided in main kitchen and be so located that the person in charge may supervise handwashing by food handlers. Handwashing facilities shall be provided in utility and other service rooms and in or adjacent to, all toilets. In buildings that are being converted to institutional purposes or in the case

of outright "new construction" to house ten (10) patients or less in a one-story building this Section does not apply.

806.3 Towels: A sufficient supply of linen or paper towels shall be constantly available so that a fresh towel can be used after handwashing. Use of a common towel is prohibited.

(*)Section 807. Food Service:

807.1 Supervision: The dietary department shall be under the supervision of a trained dietitian or a person skilled in the handling, preparation and serving of food and supervision and management of food handlers.

807.2 Food Handlers: Persons handling food to be served in hospitals and related institutions shall meet all requirements of the South Carolina State Board of Health regarding food handlers contained in Section 35-135 of the S. C. Code of 1952.

807.3 Kitchens: Before any hospital or related institution is licensed to operate under these Standards the kitchen and/or other food preparation centers must be inspected and approved by the proper representatives of the county or city health department of the area in which the institution is located.

(*)CHAPTER 9. MAINTENANCE

The hospital structure and its component parts and facilities shall be kept in good repair and operating condition.

CHAPTER 10. HOUSEKEEPING

(*)Section 1001. General:

1001.1 Janitor Storage: Adequate provision must be made for the storage of janitor's supplies and equipment.

1001.2 Maintenance: Each room, ward, corridor, and wing shall be kept neat and clean. Accumulated waste material must be removed daily. There must be frequent cleaning of floors, walls, woodwork and windows. The premises must be kept free from rodent and insect infestation. Bath and toilet facilities must be maintained in a clean and sanitary condition at all times.

(*)CHAPTER 11. LINEN

An adequate supply of fresh linen shall be available at all times. Bedpan covers must not be used interchangeably. Adequate facilities for the storage of soiled linen must be provided.

CHAPTER 12. LAUNDRY

Section 1201. Facilities:

(*)1201.1 Supply: The institution shall make provision for the proper cleaning of adequate supply of linen and other washable goods with special provision for handling contaminated linen.

1201.2 Operated by Hospital: Hospitals operating laundries within buildings containing patients shall provide proper insulation to prevent the transmission of noises to patient areas.

(*)1201.3 Commercial: Where linen is sent to an outside laundry, the hospital is responsible that the methods used shall render all linen safe for re-use.

1201.4 Laundry Ventilation: Hospitals maintaining and operating laundries shall provide ventilation for the elimination of steam and odors from patient areas.

(*)CHAPTER 13. ISOLATION

In all hospitals or related institutions admitting patients with a contagious disease, there shall be proper procedures, facilities, and arrangements of departments, rooms and patient beds for the prevention of cross infections; and for control of infectious, contagious and communicable diseases. The hospital shall provide for compliance with the regulations of the State Board of Health for the control of communicable diseases. In planning new hospitals or additions to existing hospitals, there shall be one or more rooms for isolation, according to size of the hospital and the need of the community. Rooms planned for isolation of patients should be located either at the end of a corridor or off a sub-corridor and shall have a private lavatory and toilet.

PART II—ADMINISTRATION

CHAPTER 14. ORGANIZATION

Section 1401. Governing Board:

The governing board, or the owner, or the person or persons designated by the owner as the governing authority shall be the supreme authority in the hospital responsible for the management control of the hospital and appointment of the medical staff. It shall have a written set of by-laws for operation of the hospital formulated by the governing authority. The Medical Staff shall be responsible to the governing authority for the clinical and scientific work of the hospital.

Section 1402. Patient Register:

A patient register shall be maintained by each institution and shall contain at least the following information: Patient's name, case number, date of admission, date of discharge, race, sex, days of care, and monthly totals of days of care rendered.

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Section 1403. Administrator:

The administrative officer shall be selected by the governing body, shall have charge of and be responsible for the administration of the institution in all its branches and departments and shall see that the by-laws and amendments thereto are complied with.

(*)Section 1404.—Rules and Regulations:

Written policies and procedures with which each employee shall be familiar must be established for the administrative and technical guidance of the personnel in each division of the institution and shall be available on request at time of inspection.

(*)CHAPTER 15. HEALTH OF EMPLOYEES

The governing authority with the advice of the medical staff shall adopt rules to provide that the examining physician shall certify to the administrator or supervisor that personnel who have been absent because of any communicable or contagious disease or exposure thereto, that said employee is not suffering from any condition that may endanger the health of patients.

PART III—GENERAL SERVICES

CHAPTER 16. MEDICAL STAFF

Section 1601. Organization:

1601.1 Appointments: In any hospital used by two or more physicians registered and licensed to practice the healing arts in the State of South Carolina, the medical staff shall be appointed by the governing authority and shall include all doctors who practice in the hospital and shall be an organized group who shall initiate, and, with the approval of the governing authority of the hospital, adopt rules, regulations and policies.

1601.2 Qualifications: To be eligible for membership on the staff the physician must be a graduate of an approved school of medicine, legally licensed to practice in the State of South Carolina, competent in his respective field, worthy in character and in matters of professional ethics.

1601.3 Meetings: The medical staff will meet at least once a month to review and analyze their clinical experiences in the various departments of the hospital, such as medical, surgery, obstetrics, and other specialties.

1601.4 Types of Staff: If acceptable, an applicant shall be appointed annually by the governing board and assigned definitely to one of the groups designated as honorary medical staff, consulting medical staff, active medical staff, associate medical staff and courtesy medical staff or similar staff classifications.

1601.5 Departmentalization—Over 25 Beds: In hospitals with 25 beds or more, the organized medical staff shall annually elect a staff member to be chief of staff and it shall elect a member to be the responsible head or chief for each of the departments or services afforded by the hospital, such as obstetrics, pediatrics, surgery, medicine, et cetera.

1601.6 Departmentalization—Less than 25 Beds: In hospitals of less than 25 beds, the medical staff shall annually elect one of its members to be the chief of staff.

1601.7 Responsibilities: The medical staff shall direct the interns and resident physicians in the diagnosis and treatment of all patients and in the performance of any other professional duties, in compliance with such rules for professional services of interns and resident physicians as the medical staff shall prescribe and certify to the governing body and administrative officer.

Section 1602. Supervision of Patient Care:

All persons admitted to any institution covered by these standards must be under the care of a person duly licensed to practice the healing arts in South Carolina.

(*)Section 1603. Availability for Emergencies:

All hospitals shall have a licensed physician available on call at all times.

CHAPTER 17. NURSING SERVICE

Section 1701. Organization:

(*)1701.1 Patient Care: The department of nursing shall be organized to provide complete and efficient nursing care to each patient, and the authority, responsibility and function of each nurse shall be clearly defined by regulations.

1701.2 Staff Meetings: There shall be regular meetings of the nursing staff to review and analyze the nursing service to determine the quality of the nursing care rendered to patients and to increase the efficiency of the nursing service.

(*)1701.3 Employment: Applications for employment shall be submitted, in writing, to the person responsible for nursing personnel, and each application shall contain accurate information as to the education, training, experience, current state registration and personal background of each applicant and kept on file for future reference.

Section 1702. Professional Personnel:

(*)1702.1 Availability: The hospital shall employ at least one professional registered nurse who shall be available on call at all times, except in certain cases in homes and/or hospitals for nursing, chronic, convalescent, houses for unmarried mothers, and maternity hospitals, and

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in them exceptions may be made only when given specific permission by the State Board of Health.

1702.2 Special Duty: For the purpose of these regulations special duty nurses shall be considered regular employees while on duty in the hospital.

(*)1702.3 Other Nursing Personnel: Auxiliary nursing service workers, subsidiary workers, orderlies and attendants, both male and female, who are employed by an institution in the nursing department shall be assigned only those clearly defined duties for which they are trained. They shall be under the supervision of a registered nurse, or licensed practical nurse, with the exception granted in Section 1702.1 above.

Section 1703. Procedures:

1703.1 Use of Restraints: There must be a written order signed by the physician approving use of restraints either at the time they are applied to a patient, or in case of emergency, as soon as possible after they have been applied.

(*)1703.2 Nursing Techniques: Nursing procedures shall include organized information and instruction on such routine procedures and treatments as bed-making, bed baths, enemas, temperature taking and all other routine technical services included in the nursing care program. For those procedures based on aseptic technique and involving measures for sterilization and disinfection, standard plans shall be adopted and established to be followed by responsible members of the nursing staff. This applies particularly to such procedures as care of thermometers, the use of hypodermic syringes and needles, the handling of contaminated material and equipment and all other procedures in which specific details should be carefully followed.

(*)Section 1704. Facilities:

There shall be an adequate nurses' station provided. There shall be at, or close by, each nurses' station a medicine cabinet with one or more locked sections for narcotics and poisons; cabinet space, bulletin board; telephone where practical; and where not practical some adequate means of communication so that help may be quickly summoned in emergency; adequate sink with running water; and adequate space provided for keeping patients' charts and for doctors and nurses to write records and charts. The medicine cabinet with separate compartments for storing poisons and medications for external use only must (a) be provided with lock and key, be kept locked when not being used, and key made available only to authorized personnel, (b) have adequate room and shelf space for storing medications and for preparation of same for administration by a nurse. In institutions that are to house ten (10) patients or less, the State Board of Health reserves the right to waive any or all parts thereof.

CHAPTER 18. AUXILIARY SERVICES

Section 1801. Laboratory:

1801.1 Organization: The laboratory shall be under the supervision of a physician, preferably one who has had special training in clinical laboratory procedures. The laboratory personnel shall be qualified by education, training and experience for the type service rendered.

1801.2 Facilities: Laboratory facilities must be provided in keeping with services rendered by the hospital.

Section 1802. Medical Records and Reports:

1802.1 Organization: The responsibility for supervision, filing and indexing of medical records shall be delegated to a responsible employee of the hospital.

1802.2 Indexing: Medical records shall be properly indexed and filed for ready access to members of the staff.

(*)1802.3 Ownership: Records of patients are the property of the institution and must not be taken from the hospital property except by court order.

1802.4 Contents: Adequate and complete medical records shall be written for all patients admitted to the hospital or newborn delivered in the hospital or home. All notes shall be legibly written or typed and signed. A minimum medical record shall include the following information:

Name and address of person or agency responsible for patient.

Identification data (name, address, age, sex, marital status).

Date of admission.

Date of discharge.

Complaint.

Referring and attending physicians' names.

History of present illness.

Physical examination.

Special examination, if any, such as: consultations, clinical, laboratory, X-ray, and other examinations.

Provisional or working diagnosis.

Medical treatment.

Complete surgical record, if any, including technique of operation and findings, statement of tissue and organs removed and post-operative diagnosis.

Report of anesthesia.

Nurses' notes.

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Progress notes.

Gross pathological findings; microscopic pathological findings when indicated and possible.

Temperature chart including pulse and respiration.

Final diagnosis.

Condition on discharge.

In case of death—autopsy findings, if any.

1802.5 Physician's Responsibility: It shall be the responsibility of each attending physician to complete and sign the medical record of each patient as soon as practicable after discharge.

(*)1802.6 Orders for Medication: All medical records shall contain the orders of medication and treatment written in ink and signed by the prescribing physician or undersigned by him if given, verbally upon his next visit to the institution.

(*)1802.7 Prescription: The official names of drugs prescribed shall be entered in the patient's record and not just a prescription number.

1802.8 Storage and Microfilming: All original records or photographic of same shall be stored in the hospital and none shall be disposed of under 25 years. Upon closure of a hospital, either voluntarily or by revocation of license, the medical records and all other required records will be kept intact and will not be destroyed without prior approval of the S. C. State Board of Health. Provisions shall be made for safe storage of all medical records. Institutions that microfilm medical records and reports before six years have expired must microfilm the entire medical record and/or maintain that part of the records not microfilmed. After six years have expired and records are microfilmed, the necessity of filming nurses' notes shall be decided upon by the Governing Body.

Section 1803. Pharmacy:

1803.1 Authorization for Drugs: In institutions not maintaining a pharmacy, all drugs and medicines administered to patients must be on or by the prescription of a physician or authorized person. Narcotics, hypnotic drugs, sedative drugs or other restricted drugs, for internal or external human use, may not be owned, stored, or possessed except under the immediate supervision of a Licensed Physician or Licensed Registered Pharmacist.

1803.2 Compounding of Drugs: Under no condition may a drug or medicine be compounded and dispensed by anyone other than a person authorized by the laws of the State to compound and dispense drugs, medicines and physicians' prescriptions.

(*)1803.3 Application for Narcotic Permit: A permit from the Collector, Internal Revenue, U. S. Treasury Department, is necessary for the purchase of narcotics for stock use. Any institution which is using narcotics in considerable amounts will find it more convenient to have a permit to procure narcotics than to furnish them to patients on special prescription.

PART IV—GENERAL STANDARDS FOR SPECIALIZED DEPARTMENTS OR SERVICES

CHAPTER 19. SURGERY

Section 1901. Organization:

1901.1 Consulting Staff: Hospitals of 25 beds or more providing for surgery shall have consulting physicians or a committee of consulting physicians with duly elected chairman.

1901.2 Department Head: The surgical service shall be under the supervision of a member of the staff of physicians who has been duly elected chief of the service.

1901.3 Nursing Personnel: The operating room shall be under the supervision of a qualified professional registered nurse.

Section 1902. Procedures:

Hospitals providing care of patients shall provide properly qualified personnel, modern surgical equipment, and instruments in good repair to assure safe and aseptic treatment of all patients. Any indication of abnormal infection must be reported immediately to the physician who has assumed responsibility for adequacy of care in the institution.

Section 1903. Facilities:

1903.1 Transfusions: All hospitals shall maintain facilities for blood transfusions and intravenous administration of fluids at all times.

1903.2 Segregated Units: The operating rooms shall be segregated from patient areas and shall be located so as not to be used as a passageway between or subject to contamination from other parts of the hospital.

1903.3 Oxygen: There shall be available facilities for suction, such as a tracheal catheter and equipment for administering oxygen.

CHAPTER 20. MATERNITY SERVICE

Section 2001. Organization:

2001.1 Consulting Staff: Hospitals of 25 beds or more providing for maternity service shall have consulting physicians or a committee of consulting physicians with duly elected chairman.

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2001.2 Department Head: The maternity service shall be under the supervision of a member of the staff of physicians who has been duly elected chief of the service.

2001.3 Nursing Personnel: There shall be a qualified professional registered nurse responsible at all times for the nursing care of maternity patients and newborn infants.

Section 2002. Procedures:

Hospitals providing for maternity care of patients shall provide for properly qualified personnel. All surgical equipment, and instruments shall be kept in good repair to assure safe and aseptic treatment of all patients. Any indication of abnormal infection must be reported immediately to the physician who has assumed responsibility for adequacy of care in the institution. A mother shall be considered infected and shall be isolated if: she has a communicable disease or is suspected of such; is a carrier; nurses an infected infant; is delivered outside the maternity unit of the hospital in which she is afterwards cared for; or has an unexplained fever during the puerperium.

Section 2003. Facilities:

2003.1 Patient Areas: In buildings to be occupied by new institutions where maternity service is rendered, maternity patients and newborn nurseries shall be physically separated from other patient areas. The corridors of the maternity unit, or department, shall not be used as a thoroughfare by personnel, visitors, or patients from other sections of the hospital.

2003.2 Cross Infection: Obstetric and newborn services shall be located and arranged as to provide for maximum protection of mothers and newborn infants from infection and from cross infection from patients in other services in the hospital.

2003.3 Policies: There shall be provisions and policies in regard to the care of patients with an infectious, contagious, or communicable disease which will insure the protection of other maternity patients and newborn infants.

2003.4 Transfusions: Hospitals and maternity homes shall have apparatus for blood transfusions, which shall be ready and available at all times. There shall always be available sterile sets for intravenous administration of fluids.

2003.5 Labor Room:

(a) Existing: A properly equipped labor room shall be provided in conjunction with the delivery unit unless a private room is used for labor.

(b) New Institutions: In new institutions labor rooms shall be in conjunction with the delivery units. A minimum of one labor room shall be provided for non-infected maternity patients.

2003.6 Delivery Room:

(a) Separate Facilities: In new institutions of more than 25 beds, a separate adequately equipped delivery room shall be provided for non-infected maternity patients apart from the general operating room.

(b) Segregated Units: In new institutions delivery units shall be segregated from patient areas and shall be located so as not to be used as a passageway between or subject to contamination from other parts of the hospital.

(c) Bassinets, Heated: A properly heated bassinet shall be available for each delivery. There shall be no hazardous electrical equipment in or on the bassinet.

(d) Suction: There shall be available facilities for suction, such as a tracheal catheter and equipment for administering oxygen to the newborn infant.

(e) Identification: A method of attaching proper identification to a newborn shall be provided in every delivery room.

Section 2004. Nursery:

2004.1 Purpose: A nursery is not to be used for any other purpose than to provide for the newborn.

2004.2 Bassinet Arrangement: The suspension of bassinets on hooks, against walls and on double-tier racks shall be prohibited. Bassinets shall be placed so as to protect the infant from drafts.

2004.3 Floor Areas: Nurseries shall be allowed an average of 25 square feet of superficial floor area per crib or bassinet, unless partitioned into cubicles, and shall be sufficiently large so that each bassinet will stand at least six inches from walls and partitions and be spaced at least two feet apart to permit cribside care. If aisles are used for passageways, aisles shall be at least three feet wide.

2004.4 Suspect: There shall be provisions for a suspect nursery for infants suspected of contagious, infectious or communicable disease; and there shall be provisions for the complete isolation of infants with a known infectious, contagious or communicable disease.

2004.5 Oxygen Therapy: Oxygen must be quickly and easily available in the premature nursery. When feasible oxygen piped into the premature nursery is desirable.

2004.6 Incubators: Incubators suitable for the care of premature infants shall be provided.

2004.7 Premature: The premature should be cared for in a separate nursery or should be segregated in the newborn nursery.

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2004.8 Room Thermometer: Any room used for the care of infants shall be provided with a reliable room thermometer near the cribs and approximately at crib level.

2004.9 Window Deflectors: Glass deflectors, or other effective window ventilators, are required as protection against dust and drafts.

2004.10 Cleaning: Dry sweeping and dusting of walls and floors is prohibited.

2004.11 Techniques: A lavatory for handwashing shall be provided in the nursery or nursery work room.

Section 2005. Formulary:

2005.1 Preparation: Each maternity department shall have adequate facilities for the storage, handling, and preparation of formulas for infants apart from food provided to adult patients.

2005.2 Refrigeration and Sterilization: Proper sterilization and refrigeration equipment shall be provided in the formula room, or where the formula is prepared, or in an adjoining room. In addition, sink, lavatory for handwashing, a means for rapidly cooling bottles for formulas after sterilization (i. e., water bath, ice bath), cupboards and a work table shall be provided.

CHAPTER 21. PEDIATRICS

Section 2101. Organization:

Hospitals providing pediatric care shall be evaluated and approved on the basis of the size of the service and competency of personnel, facilities, policies, and procedures. A hospital providing care for children shall have registered nursing personnel commensurate with the needs of the hospital and the size of the service.

Section 2102. Facilities:

Hospitals providing pediatric care shall have proper facilities for the caring of children apart from the services for adult patients, apart from the newborn nursing service and there shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions.

CHAPTER 22. ANESTHESIA

Section 2201. Procedures:

2201.1 Administration: Anesthesia shall be administered only by a person adequately trained and competent in anesthesia administration, or under the close supervision of such a person. After the administration of a general or spinal anesthetic, patients shall be constantly attended by competent personnel until they have regained full consciousness, or until the effects of the anesthetic have sufficiently subsided for the patient to be able to summon aid when needed.

2201.2 Physical Examination: Operations under a general anesthetic (inhalation, spinal, intravenous, or rectal) shall not be performed nor a general anesthetic given until the patient has had a physical examination including examination of the chest for respiratory infection or cardiac disease and including a urinalysis with tests for albumen and sugar. The results of these examinations, together with a pre-operative diagnosis, shall be entered in the patient's record.

CHAPTER 23. RADIOLOGY

Section 2301. Organization:

The department shall have a qualified licensed physician in charge.

Section 2302. Procedures:

A written report on each X-ray film taken shall be made and properly filed.

Section 2303. Facilities:

There shall be adequate facilities for the storage and protection of X-ray film.

CHAPTER 24. EMERGENCY OUT-PATIENT DEPARTMENT

Section 2401. Organization:

Competent personnel shall be available on call at all times for the care of emergencies for all hospitals rendering emergency care.

Section 2402. Facilities:

Any hospital furnishing emergency out-patient service shall provide space and facilities for emergency treatment including the administration of blood or blood plasma and intravenous medication, facilities for the control of bleeding, and the emergency splinting of fractures, and it shall provide facilities for the administration of oxygen and anesthesia.

CHAPTER 25. DENTAL SURGERY

Section 2501. Organization:

Hospitals providing dental service shall have a qualified practitioner of dentistry in charge of the dental unit and he shall be a member of the staff.

Section 2502. Facilities:

There should be standardized equipment for the diagnosis and treatment of diseases of the teeth, performance of orthodontia, and rehabilitation of defective teeth and oral surgery, including all necessary anesthetic and sterilization equipment.

CHAPTER 26. PHYSICAL THERAPY

Physical therapy, if afforded as a service of the hospital, shall be under medical direction and administered by persons properly qualified in the field. Adequate space and equipment shall be provided for this service.

CHAPTER 27. OCCUPATIONAL THERAPY

Occupational therapy, if afforded as a service of the hospital, shall be under medical direction and administered by properly qualified occupational therapists, and adequate space and equipment shall be provided for occupational therapy.

**PART V—ADDITIONAL STANDARDS FOR INSTITUTIONS RENDERING
SPECIALIZED CARE**

CHAPTER 28. TUBERCULOSIS HOSPITALS

Section 2801. Organization:

2801.1 Staff, Medical and Surgical: Each hospital shall have either on its resident or visiting staff at least one tuberculosis specialist. In addition, arrangements shall be made to secure consultant services in other fields of medicine and surgery when conditions warrant such services.

2801.2 Dental: The services of a dentist shall be provided as needed.

2801.3 Nursing: The director of nurses shall be a professional registered nurse and shall have had special training or two years' experience in tuberculosis nursing.

Section 2802. Procedures:

2802.1 Examination: Each patient shall have a medical history taken and physical examination made by a physician as soon as practical after admission. All patients with expectoration shall have their sputum examined for tubercle bacilli by direct smear on admission, and if the smears are negative, more sensitive methods for detection of tubercle bacilli (concentration tests, cultures, or guinea pig inoculation) must be employed. Sanatoria with less than 50 beds may arrange to have an outside laboratory perform these tests. All patients who are arising, with the exception of progressive far-advanced cases, should have their sputum examined at least once a month. All patients shall have a chest roentgenogram on admission and as often thereafter as is necessary to detect changes in the pulmonary lesions, with a maximum interval of once in four months, and within two months of discharge. A written report on each X-ray film taken shall be made and properly filed.

2802.2 Sputum Disposal: Patients shall be provided with cardboard sputum boxes and paper handkerchiefs or satisfactory substitutes therefor, which shall be destroyed by incineration after use. Reasonable precautions shall be taken against exposing personnel and other patients to infection from sputum-positive cases.

2802.3 Techniques: An approved technique for preventing the spread of infection from the patient to employees shall be carried out. This applies particularly to the nurses giving bedside care, and masks and gowns shall be provided for their use. It is especially important that adequate handwashing facilities be provided on all floors.

2802.4 Personnel Employment: All employees, professional and non-professional, shall be given a pre-employment physical examination including the chest X-ray, which shall also be given on leaving the employment of the institution.

Section 2803. Facilities:

2803.1 Laboratory: If the hospital operates and maintains its own laboratory, adequate space and equipment shall be provided for hematology, urinalysis, bacteriology, and sputum examination. If the hospital does not operate its own laboratory, adequate working space, equipment and supplies shall be provided for emergency laboratory work.

2803.2 X-ray Equipment: Each hospital, irrespective of its size, shall have X-ray equipment capable of producing satisfactory diagnostic roentgenograms of the chest. A satisfactory fluoroscope shall be provided if pneumothorax or pneumoperitoneum is done in the institution.

2803.3 Pneumothorax: There must be apparatus for the administration of artificial pneumothorax.

Section 2804. Other Requirements:

IN SUCH INSTITUTIONS PART I OF THESE STANDARDS WILL APPLY. IN THE EVENT THESE INSTITUTIONS OFFER SPECIALIZED SERVICES, THE APPROPRIATE SECTIONS OF PARTS II, III AND IV WILL APPLY.

CHAPTER 29. MATERNITY HOSPITALS

Section 2901. Organization:

2901.1 Type Patients: To secure a license for a "maternity hospital" previously defined in these standards, the institution must house only maternity patients for care.

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2901.2 Admissions: Patients shall be accepted only upon approval of a duly qualified physician except under emergency circumstances which make it impossible to obtain prior approval for the admission of the patient.

Section 2902. Delivery Facilities: No patient shall be delivered in a room occupied by another patient. When a patient's room is used for delivery, it must be of sufficient size. The room used for delivery shall be set up in accordance with the physician's instructions, and with all supplies and equipment needed. There must be adequate lighting of the delivery field. Sterile supplies may be furnished by the physician, but a complete set for at least one delivery shall be on hand at all times to meet emergencies.

Section 2903. Other Requirements:

IN SUCH INSTITUTIONS PART I OF THESE STANDARDS WILL APPLY. IN THE EVENT THESE INSTITUTIONS OFFER SPECIALIZED SERVICES, THE APPROPRIATE SECTIONS OF PARTS II, III AND IV WILL APPLY.

CHAPTER 30. CHRONIC AND CONVALESCENT HOSPITALS, INSTITUTIONAL INFIRMARIES, AND NURSING HOMES

Section 3001. Organization:

3001.1 Licensee: After July 1, 1953, no institution in this category shall be issued a license unless the "licensee" has submitted written evidence satisfactory to the State Board of Health that he is not less than 21 years of age and of reputable and responsible character. In the event the applicant is an association or corporation or governmental unit information shall be submitted as to the members thereof and the persons in charge.

3001.2 Medical Responsibility: Each patient, his guardian or the agency responsible for his care shall designate a licensed physician for the supervision of the care and treatment of the patient during his stay in the institution.

3001.3 Nursing Responsibility: A registered nurse or a practical nurse properly trained and licensed shall be employed and made responsible for the nursing care in the institution. Practical nurses shall be licensed under the provision of Section 56-993 of the South Carolina Code of 1952.

3001.4 Other Personnel: There shall be sufficient personnel in the institution at all times to provide adequate care for patients and to maintain satisfactory supplementary services required by the institution.

Section 3002. Procedures:

3002.1 General: Admission of patients shall be governed by the type of service available and no patient shall be admitted whose disease or condition indicates the need for a type of service that is not available in the institution. When both sexes are admitted, facilities shall be arranged to afford proper segregation and privacy.

3002.2 Admission Record: The admission record shall contain a diagnosis of illness or description of physical condition with definite instructions relative to care and treatment of the patient and shall be signed by a duly licensed physician.

3002.3 Age Restriction: Children under 12 years shall not be admitted to institutions caring for adults unless special segregated facilities are maintained.

3002.4 Separate Accommodations: In the event that an acutely or critically ill patient cannot be transferred to a suitable hospital he shall be isolated preferably in a private room.

3002.5 Patients Not to Be Admitted: The following types of patients shall not be admitted to institutions licensed under these Standards:

- (a) Patients suspected of having acute communicable disease, tuberculosis, or other conditions of an infectious nature.
- (b) Maternity patients.
- (c) Mentally ill, mentally defective, epileptic, senile, drug addicted or alcoholic patients unless there is established a separate division which is licensed under Act 836 of the Acts and Joint Resolutions of the General Assembly of South Carolina 1952 Session "Establishment of Mental Health Commission."

3002.6 Handling of Medications: The contents of all individual prescriptions shall be kept in the original container bearing the original label on which should be the prescription number; on discharge of a patient, any unused portions of prescriptions left in the home shall be destroyed.

3002.7 Restraint: No patient shall be locked in his room unless the institution has a division or unit which meets the requirements of the Mental Health Commission or the State Board of Health. If for any reason a patient develops a mental condition which will require a prolonged restraint or isolation the licensee shall take immediate action to have the patient transferred to an institution licensed to care for such patients.

3002.8 Medical Chart: A chart, containing carefully recorded nurses' notes and doctors orders pertaining to the care and treatment rendered, shall be kept on every patient.

Section 3003. Facilities:

3003.1 Equipment: Beds of household height may be used for aged persons; however, there shall be an adequate number of beds of hospital height or means of elevating beds, for patients receiving bed nursing care.

3003.2 Lavatories: Lavatories shall be provided in the ratio of at least one lavatory to every eight patients or fraction thereof.

Section 3004. Licensing Exception:

Privately owned educational institutions who maintain infirmaries for the exclusive use of their student bodies are exempt from the provisions of this Law.

Section 3005. Other Requirements:

All Sections marked (*) in Parts I, II and III of these Standards apply.

CHAPTER 31. CONTAGIOUS DISEASE HOSPITALS

Section 3101. General:

To secure a license as a contagious disease hospital, an institution must be maintained in a separate building, be devoted exclusively to the care of persons who have, or are suspected of having, infectious, contagious, or communicable disease. There must, however, be rigid policies enforced by the medical, nursing, and lay staffs providing for proper isolation technique in order to prevent cross-infection between patients.

Section 3102. Other Requirements:

IN SUCH INSTITUTIONS PART I OF THESE STANDARDS WILL APPLY. IN THE EVENT THESE INSTITUTIONS OFFER SPECIALIZED SERVICES, THE APPROPRIATE SECTIONS OF PARTS II, III AND IV WILL APPLY.

CHAPTER 32. ORTHOPEDIC HOSPITALS

Section 3201. General:

To be licensed as an Orthopedic Hospital an institution must be devoted exclusively to the care of orthopedic patients and have on the staff professional personnel especially qualified in the diagnosis and treatment of orthopedic conditions.

Section 3202. Other Requirements:

IN SUCH INSTITUTIONS PART I OF THESE STANDARDS WILL APPLY. IN THE EVENT THESE INSTITUTIONS OFFER SPECIALIZED SERVICES, THE APPROPRIATE SECTIONS OF PARTS II, III AND IV WILL APPLY.

CHAPTER 33. PEDIATRIC HOSPITALS

Section 3301. General:

To be licensed as a Pediatric Hospital an institution must be devoted exclusively to the diagnosis and treatment of pediatric patients and have on the staff personnel especially qualified in the diagnosis and treatment of diseases of children.

Section 3302. Other Requirements:

IN SUCH INSTITUTIONS PART I OF THESE STANDARDS WILL APPLY. IN THE EVENT THESE INSTITUTIONS OFFER SPECIALIZED SERVICES, THE APPROPRIATE SECTIONS OF PARTS II, III AND IV WILL APPLY.

CHAPTER 34. EYE, EAR, NOSE, THROAT HOSPITALS

Section 3401. General:

To be licensed as an Eye, Ear, Nose, Throat Hospital, an institution must be devoted exclusively to the diagnosis and treatment of conditions of the eye, ear, nose and/or throat, and have on the staff personnel especially qualified in the diagnosis and treatment of diseases of the eye, ear, nose and/or throat.

Section 3402. Other Requirements:

IN SUCH INSTITUTIONS PART I OF THESE STANDARDS WILL APPLY. IN THE EVENT THESE INSTITUTIONS OFFER SPECIALIZED SERVICES, THE APPROPRIATE SECTIONS OF PARTS II, III AND IV WILL APPLY.

Midwives

(Filed Secretary of State's office September 24, 1952.)

III. Regulations.

Amend by striking out the following: "(2) A midwife should accept only patients who engage her before or by the 5th month of pregnancy and see that they have Prenatal Care," and inserting in lieu thereof the following: "(2) A midwife shall see that patients have prenatal care approved by Health Director, this care to be given by a licensed medical doctor or at a clinic conducted by a licensed medical doctor."

Amend, further, by striking out, wherever they may appear the words "physician" or "doctor" and inserting in lieu thereof the words "licensed medical doctor".

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Pursuant to § 32-8, S. C. Code of 1952.

(Filed in the Office of the Secretary of State Nov. 19, 1953.)

Amend III. REGULATIONS, sub-section (10) by striking out the words "the assistance of" so that sub-section (10) shall read as follows: "A midwife shall endeavor to secure a licensed medical doctor if the child is not born after eighteen hours of labor or if anything goes wrong."

AMEND, FURTHER, on face of the certificate by striking out "1953" and inserting "1954".

Milk and Milk Products

Pursuant to § 32-8, S. C. Code of 1952.

(Filed Secretary of State's office March 19, 1953.)

Section 1. Definitions.

C. (a) Cream and sour cream—Cream is a portion of milk which contains not less than 18 percent milk fat. Sour cream is cream the acidity of which is more than 0.20 percent, expressed as lactic acid. (b) Half and Half is a product consisting of a mixture of milk and cream which contains not less than 11.5 percent milk fat.

Psittacine Birds

Pursuant to § 32-8, S. C. Code of 1952.

(Filed Secretary of State's office February 4, 1953.)

1. The term "psittacine birds" shall include all birds commonly known as parrots, Amazons, Mexican double heads, African grays, cockatoos, macaws, parakeets, love birds, lorries, lorikeets and all other birds of the psittacine family.
2. No permit will be required to ship psittacine birds into or out of South Carolina.
3. No person, firm, or corporation that handles, purchases, sells, exchanges, or otherwise deals in psittacine birds may purchase, sell, trade, or otherwise exchange any birds of the psittacine family that are sick or from any aviary or premise known to be or declared to be infected with psittacosis.
4. The State Health Officer may deny entry of psittacine birds into South Carolina from any aviary or area under quarantine for psittacosis or from any area declared to be an area of infection by the Surgeon General of the U. S. Public Health Service or any State Board or Department of Health.
5. Every person, firm, or corporation that purchases, breeds, sells, trades, exchanges, or otherwise deals in psittacine birds is required to keep a record of each transaction of purchase, sale, trade or exchange showing the date of such transaction, the number and kind of birds in the transaction and the name and address of the person, firm, or corporation from which purchased or to whom sold, traded or exchanged for a period of two years.
6. All records of sales, purchases, trades or exchanges shall be available for inspection on demand by any official of the State Board of Health.
7. The State Health Officer is hereby authorized to quarantine any aviary, premise, or area in the State found to be or suspected of being infected with psittacosis.
8. It shall be the duty of every person having the custody of any psittacine bird to report to the local health authority any unusual illness or death among such birds.

Shoe Fitting Machines

USE OF FLUOROSCOPIC SHOE FITTING MACHINES.

Pursuant to § 32-8, S. C. Code of 1952.

(Filed Secretary of State's Office February 13, 1953.)

Part I Introduction

Sec. 1 Purpose

- (a) The hazards to health attendant to the operation of x-ray units are well known, and examples of injuries to x-ray technicians and others exposed to x-radiation are easily found. Fluoroscopic shoe fitting devices are specialized examples of x-ray units, and hence if not properly safeguarded are capable of inflicting injury to both salespeople and customers.

Sec. 2 Definitions

- (a) Direct radiation. All radiation coming from within the x-ray tube and housing except the useful beam.
- (b) Lead equivalent. The thickness of lead affording the same protection under the specified conditions, as the material in question.

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- (c) Milliroentgen (mr). One one-thousandth of a roentgen.
- (d) National Electric Code. The Standard of the National Board of Fire Underwriters.
- (e) Primary radiation. Radiation coming directly from the tube target.
- (f) Roentgen (r). The International Unit of quantity or dose of x-ray or gamma rays. That quantity of x or gamma radiation such that the associated corpuscular emission per 0.001293 g. of air, produces in air, ions, carrying electrostatic unit quantity of electricity of either sign.
- (g) Scattered radiation. Radiation which in passing through matter has been changed in direction, or modified in wave length. It is one form of secondary radiation.
- (h) Secondary radiation. Radiation emitted by all matter irradiated by x-ray.
- (i) Stray radiation. Radiation not serving any useful purpose. It includes direct radiation and secondary radiation.
- (j) Useful beam. That part of the primary radiation which passed through the aperture, cone, or other collimator.
- (k) Shall is construed to mean mandatory.
- (l) Should is construed to mean advisable.

Part II

Registration

Any establishment, person, or firms in the State of South Carolina using an x-ray fluoroscopic device for fitting shoes shall register such machines with the State Board of Health.

Owners of machines currently in use shall have until July 1, 1952, to register them.

All machines shall be required to meet the physical standards which follow in these regulations. Conditional acceptance for operation will be granted owners of machines now in use for a period of six months to make modifications. Machines failing to meet requirements at the end of this period shall be removed from service until modified to meet these specifications.

Machines purchased after the adoption of these regulations shall be registered with the South Carolina State Board of Health before being placed in service.

Part III

Inspections

The South Carolina State Board of Health shall make a thorough inspection of each machine at least twice a year and shall, at its discretion, make additional spot inspections.

Machines which have been removed from service for cause shall not be returned to service until inspected and approved by the State Board of Health. When any modification, repair, adjustment, or replacements are made on a machine the owner shall notify the State Board of Health of changes made in order that an inspection can be made.

An inspection certificate will be issued after an inspection has been completed. This certificate shall be displayed below the warning sign (See Section 7, Part VI) on the customer's side of the machine.

Part IV

Primary X-Ray Beams

Sec. 3 Intensity

- (a) The greatest intensity of the useful beam, measured on the basis of the foot opening, shall not exceed 12 roentgens per minute.
- (b) Two other intensities of less than 12 roentgens per minute shall be provided, one of nine roentgens per minute to allow the fitting of women's shoes and the other six roentgens per minute to allow the fitting of children's shoes.

Sec. 4 Filtration

- (a) The floor of the foot opening shall be provided with a sheet of aluminum at least 1 mm. thick and of dimensions equal to or greater than the floor. The aluminum filter shall be protected by a layer of other material and shall be installed in such a fashion that its thickness can conveniently be determined.

Sec. 5 Control

- (a) An automatic timer shall be provided that will limit the operation of the x-ray tube to a five-second interval.
- (b) A means shall be provided for making fittings at each of the three intensities previously listed. The words CHILDREN, WOMEN AND MEN shall be posted to designate the lowest, intermediate and greatest intensities respectively.
- (c) The starting mechanism shall be so designated to prevent operation by customers.
- (d) The operation of the machine by unauthorized persons shall be prohibited.
- (e) A milliamperage meter indicating the current flowing through the x-ray tube circuit shall be located on the instrument panel in full view of operator. The amperage in this circuit shall not exceed a predetermined flow which will produce a useful beam intensity of 12 roentgens per minute but in no case shall it exceed 4 millamperes.

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- (f) The screens shall be covered with leaded glass having a lead equivalent of at least 1.5 millimeters for 65 kilovolts peak.
- (g) The viewing time should be limited to the shortest time necessary to accomplish the fitting.
- (h) Each observation shall be limited to 5 seconds or less. Unnecessary demonstration of fit or lack of fit to a customer's family or friend shall not be allowed.
- (i) The total exposure time for any one customer in any one day shall be restricted to 25 seconds (5 fittings).
- (j) The operator of the machine shall not use his own feet or hands for demonstrating x-ray fluoroscopy. Children's feet shall not be held in position by any regular operator of any x-ray device unless the operator is wearing approved protective gloves.
- (k) The customer shall have shoes on BOTH feet at the time of a fluoroscopic examination.
- (l) The customer shall be cautioned by the clerk that the machine he is about to use is an x-ray device. The clerk shall question the customer regarding dates and number of previous exposures and shall not use the machine in cases where he has reason to believe that its use would exceed the customer's total allowable exposures for the year (total allowable 20 -5 seconds fittings for a calendar year).
- (m) When more than one salesperson is employed, each shall operate the machine for his own customers.
- (n) Operators shall report promptly any defects in the machine to a responsible company official.

Part V Stray Radiation

Sec. 6 Control

- (a) The x-ray tube shall be so shielded that stray radiation is rendered to less than $12\frac{1}{2}$ milliroentgens per hour at all positions to the rear (operator's station), sides, top and bottom of the cabinet. Measurements at the back and sides shall be made within 6 inches of the cabinet and at viewing ports at eye level.
- (b) The foot opening in the cabinet shall be so constructed and shielded that stray radiation at a distance of 10 feet forward shall not exceed $12\frac{1}{2}$ milliroentgens per hour. Except that the inspector may allow a maximum of 50 mr/hour at this point in cases where the machine is properly located, (See c below) and other stray radiation levels do not exceed allowable limits.
- (c) The machine shall be located as far as possible from frequently occupied areas. Employees who work in one location only, such as cashiers and wrappers shall not be stationed in front of the machines, at any distance. Employees who do not spend their time in one location, such as salesmen, shall not regularly perform duties within ten feet of the front of the machine.

Part VI Warning and Instruction Signs

Sec. 7

- (a) A warning placard to be furnished by the authority shall be conspicuously posted on at least two sides, including the customer's side, of each shoe fitting machine. This placard shall be worded as follows:

WARNING

EXPOSURE TO X-RAY MAY BE HARMFUL. CUSTOMERS MUST NOT OPERATE THIS MACHINE. LIMIT FOR EACH CUSTOMER: 5 X-RAY OBSERVATIONS PER DAY, YEARLY TOTAL NOT TO EXCEED 20 X-RAY OBSERVATIONS.

Part VII Electrical Safeguarding

Sec. 8

- (a) All metal non-current carrying parts shall be grounded in accordance with the applicable requirements of the National Electrical Code.
- (b) An interlocking switch shall be provided on the container housing the x-ray tube. This switch shall operate to break the electrical circuit whenever the container is opened.

Highway, State Commission, State.

ADOPTED BY THE SOUTH CAROLINA STATE HIGHWAY COMMISSION.

**Hilton Head Ferry in Beaufort County,
Vehicle Load and Size Limits**

Pursuant to § 33-724, S. C. Code of 1952.

(Filed Secretary of State's office May 16, 1953.)

Section 1. Vehicles of the following size and weights will not be transported:

Ferry Boat Pocahontas

1. Any vehicle or combination of vehicles weighing more than 23,000 lbs. gross vehicle weight.
2. Any vehicle or combination of vehicle exceeding 36 feet in length or eight feet in width, including any over-hanging load.

Ferry Barge

1. Any vehicle weighing more than 23,000 lbs. gross vehicle weight.
2. Any vehicle exceeding 25 feet in length or eight feet in width, including any over-hanging load.
3. Any trailer or semi-trailer, except automobile with two-wheel cargo trailer, over-all length not exceeding 25 feet.

Section 2. No explosives or dynamite may be transported.

Section 3. No bus, even though it complies with weight and length limitations, may be transported while loaded with passengers.

Section 4. The Shipmaster may deny ferry service to any vehicle or contrivance which, in his opinion, is overweight; will take up too much space; or will be hazardous to transport.

Section 5. Gasoline, gas or fuel oil trucks which comply with weight and length limitations will be transported on the Ferry Barge only at the discretion of the Shipmaster so as to be carried along with similar cargo and without pedestrians or passengers.

Section 6. The number of vehicles and passengers carried on each trip will be at the discretion of the Shipmaster.

Industrial Commission.

ADOPTED BY THE SOUTH CAROLINA INDUSTRIAL COMMISSIONER.

Pursuant to § 72-59, S. C. Code of 1952.

7.

Failure of employer presumptively excluded from act to file notice.—When an employer which, having less than fifteen employees in South Carolina, was presumptively excluded from the provisions of the Workmen's Compensation Act, elected to come under its terms, it was incumbent upon such employer to give its employee notice that it had so elected, so that the employee, if he so desired, could file his notice of election not to come under the terms of the act. Until this was done it could not reasonably be held that the Workmen's Compensation Act, on a cause of action for assault and battery, constituted the employee's exclusive remedy. *Herring v. Lawrence Warehouse Co.*, 222 S. C. 226, 72 S. E. (2d) 453 (1952).

14.

Granting or refusal of continuance rests in sound discretion of Commission and such discretion when exercised will not be interfered with unless abuse thereof is shown. *Gurley v. Mills Mill*, 225 S. C. 46, 80 S. E. (2d) 745 (1954).

Rule 20 Amended

(Filed in the Office of the Secretary of State April 27, 1954.)

In all contested cases before a Single Commissioner, and on all appeal cases to the Full Commission, only licensed attorneys in South Carolina shall be allowed to practice before the South Carolina Industrial Commission: PROVIDED, HOWEVER, that should out of State licensed attorneys have associated with them an attorney or attorneys of this State, the foregoing requirements may be waived by the Commission.

Insurance Commissioner.

ADOPTED BY THE SOUTH CAROLINA INSURANCE COMMISSIONER.

Liquefied Petroleum Gases

Promulgated under authority of §§ 66-440.6 and 66-440.7, S. C. Code of 1952.

(Filed in the Office of the Secretary of State Aug. 25, 1954.)

A copy of the Standards of the National Board of Fire Underwriters for the Storage and Handling of Liquefied Petroleum Gases as recommended by the National Fire Protection As-

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sociation, dated July, 1954 was filed in the Office of the Secretary of State August 25, 1954. Those interested should refer to this pamphlet.

Optometry, Board of Examiners in.

ADOPTED BY THE SOUTH CAROLINA BOARD OF EXAMINERS IN OPTOMETRY.

Pursuant to § 56-1058, S. C. Code of 1952.

(Filed in office of Secretary of State Sept. 9, 1954.)

Rules of Practice

A. No licensed optometrist shall willfully violate the optometry law or the Optometry Board rulings of the State of South Carolina.

B. No licensed optometrist when using the doctor title shall qualify it in any other way than by the use of the word "Optometrist." He may, however, when not using the prefix, use after his name the "O. D." degree designation.

C. No licensed optometrist actively in engaged in the practice of Optometry shall in any manner publicize or hold himself forth as an optician.*

D. No licensed optometrist shall display his license, diplomas, or certificates in such manner as to be seen and read from outside his office.

E. No licensed optometrist shall hold himself forth in such way as to carry the slightest intimation of having superior qualifications or being superior to other optometrists.

F. No licensed optometrist holding an official position in any optometric organization shall use such position for advertising purposes or for self-aggrandizement.

G. No licensed optometrist shall display any sign containing other than name, profession (optometrist), and office hours; same to be used only on office windows or at entrance to his office. Letters must not be luminous or illuminated, and must not be more than 4" in height for street level and 6" in height for offices above street level. No neon signs are permissible.

Condensed or narrow block lettering is recommended, and 2½" lettering on downstairs doors or windows is recommended. Only the optometrist's name, the word "Optometrist" and his office hours is the preferred wording but he may use the words "Eyes Examined" and any one optometric specialty such as "Visual Training," "Contact Lenses," etc.

If an indoor sign is preferred to lettering on the window, bronze or opal glass plate is permitted, provided that it conforms to size requirements (preferably 2½" lettering). No neon or illuminated name plates are permitted.

H. No licensed optometrist shall display eyeglass signs or painted or decalcomania eyes anywhere.

I. No licensed optometrist shall use other than his professional card on or in any publication or in any public display; said card shall not exceed one column by two (2) inches, and it shall not contain any more than his name, profession, address, telephone number, office hours, eye examination by appointment, practice limited to (any one optometric specialty). Educational material may be published only when it has been specifically approved by the South Carolina Board of Examiners in Optometry. Provided, when announcing the opening of a permanent office, a 2" double column space is permissible.

No moving picture, bus or outdoor advertising is permissible. The use of handbills is prohibited. No individual use of the radio is permissible. This of course does not prohibit optometric visual care programs from being used provided they have been approved by the Board and are sponsored by a *group*, not an *individual*.

J. No licensed optometrist shall use bold-face type or in any other manner attempt to attract special attention to himself in any telephone or other public directory.

K. No licensed optometrist shall display any lenses, spectacle frames or mountings, or any other ophthalmic material or advertising of any kind in the windows or in any room in his office for the purpose of inducing patronage.

L. No licensed optometrist shall do anything inconsistent with professional standards of the optometric and allied health professions.

*An optometrist is a professional man, assuming the same obligations and meriting the same confidence of his patients as do the other professions. The optician is a technician who is obligated to carry out the instructions of the professional man. He does not have any professional responsibility to the public. You cannot be both "fish and fowl" and optometrists cannot expect to be regarded by the public as professional men if they also represent themselves to the public as opticians. The fact that an optometrist may also hold a license as an optician does not alter this relationship.

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M. No licensed optometrist shall fail to observe scrupulously the Code of Ethics and other provisions of the South Carolina Optometric Association and the American Optometric Association.

N. No licensed optometrist shall practice his profession in a space leased or rented in a business establishment such as a jewelry, department or other store: Provided, it is not unlawful to share a joint waiting room with a practitioner of another recognized profession. Provided, further, that this shall not be construed to prevent an optometrist now practicing optometry in a store owned and operated by himself from continuing to so operate.

O. It shall be permissible to use the phrase "successor to Dr." for one year but no longer.

Pharmaceutical Examiners, State Board of.

ADOPTED BY SOUTH CAROLINA BOARD OF PHARMACEUTICAL EXAMINERS.

Pursuant to § 56-1311.1, S. C. Code of 1952.

(Filed in Secretary of State's Office July 7, 1954.)

Operation of drug store or pharmacy while pharmacist is not on duty.

The prescription department of a drug store or pharmacy must be closed and a sign stating
"PRESCRIPTION DEPARTMENT CLOSED
PHARMACIST NOT ON DUTY"

must be displayed during the absence of the registered pharmacist and assistant pharmacist.

DANGEROUS DRUGS:

Such drugs, medicines, pharmaceuticals or biologicals bearing the labeling—

CAUTION: Federal law prohibits dispensing without prescription—
are classified by the Board as "Dangerous Drugs" within the meaning of the Act and may not be sold except on the prescription of a physician, dentist or veterinarian.

Public Service Commission, The.

ADOPTED BY THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION.

Common Carriers by Rail and Express Companies.

Rule No. 14 (a). Closing or discontinuing depots, stations and agencies.

Stated in Atlantic Coast Line R. Co. v. Public Service Commission of S. C., Westbrook Advance Sheets, No. 16919, filed Oct. 11, 1954.

Motor Vehicles Transporting Persons or Property

Pursuant to § 58-1461, S. C. Code of 1952.

SECTION 1. Definitions

(Filed Secretary of State's office November 1, 1952.)

Rule 18 A. That the term "Commodities In General," be and it is hereby interpreted as not including **Petroleum Products In Tank Trucks, High Explosives And Other Dangerous Commodities, And Household Goods As Defined In Motor Freight Tariff 8-A, S. C. S. C.—MF No. 26.**

SECTION 6. Insurance—Surety Bonds—C. O. D. Bonds

(Filed Secretary of State's office July 7, 1953.)

Rule 57. Each policy or bond issued under the provisions of Section 58-1481, Code of Laws of South Carolina, 1952, as amended, and this section, shall carry the following endorsement:

**ENDORSEMENT FOR MOTOR VEHICLE CARRIER POLICIES OF INSURANCE
FOR PUBLIC LIABILITY AND PROPERTY DAMAGE UNDER SECTION
58-1481, SOUTH CAROLINA CODE, 1952, AS AMENDED**

The policy to which this endorsement is attached is an automobile liability policy and is hereby amended to assume compliance by the insured as a motor carrier of passengers or property, with Section 58-1481 of the South Carolina Code of 1952, as amended, and the Rules and Regulations of the Public Service Commission. In consideration of the premium stated in the policy to which this endorsement is attached, the company hereby agrees to pay any final judgment recovered against the insured for bodily injury to or the death of any person or loss of or damage to property of others (excluding injury to or death of insured's employees while engaged in the course of their employment, and loss of or damage to property of the insured, and property transported by the insured designated as cargo), resulting from the negligent operation, maintenance, or use of motor vehicles under certificate of public convenience and necessity issued to the insured by the Public Service Commission or otherwise under Sections 58-1401 through 58-1501 of the South Carolina Code of Laws, 1952, and amendments thereto, within the limits of liability hereinafter provided, regardless of whether such

RULES AND REGULATIONS

motor vehicles are specifically described in the policy or not. It is understood and agreed that upon failure of the Company to pay any such final judgment recovered against the insured, the judgment creditor may maintain an action in any court of competent jurisdiction against the Company to compel such payment. The bankruptcy or insolvency of the insured shall not relieve the Company of any of its obligations hereunder.

The liability of the Company extends to such losses, damages, injuries, or deaths whether occurring on the route or in the territory authorized to be served by the insured, or elsewhere in the State of South Carolina.

The liability of the Company on each motor vehicle for the following limits shall be a continuing one notwithstanding any recovery hereunder:

SCHEDULE OF MINIMUM LIMITS

<i>Motor Carriers</i>	<i>Bodily Injury Liability</i>		<i>Property Damage Liability</i>
	(2)	(3)	(4)
		<i>Limit for bodily injuries to or death of all persons injured or killed in any one accident (subject to a maximum of \$10,000 for bodily injuries to or death of one person)</i>	<i>Limit for loss or damage in any one accident to property of others (excluding cargo)</i>
<i>Kind of Equipment</i>	<i>Limit for bodily injuries to or death of one person</i>	<i>Limit for bodily injuries to or death of one person</i>	<i>Limit for loss or damage in any one accident to property of others (excluding cargo)</i>
Passenger equipment (seating capacity) Classes A and B, and Class C for vehicles with seating capacity of over 5 passengers:			
7 passengers or less	\$10,000	\$ 30,000	\$5,000
8 to 12 passengers, inclusive	10,000	40,000	5,000
13 to 20 passengers, inclusive	10,000	60,000	5,000
21 to 30 passengers, inclusive	10,000	80,000	5,000
31 passengers or more	10,000	100,000	5,000
Class C, not over 5 passengers	10,000	20,000	5,000
Freight equipment (all motor vehicles used in the transportation of property) Classes D, E and F	10,000	20,000	5,000

Nothing contained in the policy or any other endorsement thereon, nor the violation of any of the provisions of the policy or of any endorsement thereon by the insured, shall relieve the Company from liability hereunder or from the payment of any such final judgment.

The insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim or suit involving a breach of the terms of the policy and for any payment that the Company would not have been obligated to make under the provision of the policy, except for the agreement contained in this endorsement.

This indorsement may not be cancelled or its terms or conditions altered, amended or otherwise changed in any particular without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days' notice in writing to the Public Service Commission of South Carolina, at its office in Columbia, South Carolina, copy of such cancellation notice to be given to the insured or the Company as the case may be, said thirty (30) days' notice to commence to run from the date notice is actually received at the office of said Commission.

Attached to and forming part of policy No. issued by the (herein called the Company) of to of Dated at this day of, 19.... Countersigned by

Authorized Company Representative.

Title

CODE OF LAWS OF SOUTH CAROLINA

Rule 57A

Pursuant to §§ 58-1401 through 58-1501, S. C. Code of 1952.

(Filed in Secretary of State's office July 23, 1953.)

Rule 57A. Certificates of Public Liability and Property Damage Insurance made up in triplicate, original and second copy white, first copy light green, size 5" x 8", may hereafter be accepted in lieu of such insurance policies when filed in triplicate as follows:

MOTOR CARRIER AUTOMOBILE BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE

Filed With

THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
Columbia, South Carolina

To be sent to—

THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
Columbia, S. C.

(Executed in Triplicate)

Received and accepted for filing:

Date

THIS IS TO CERTIFY, That the
(Name of Company)

(hereinafter called Company) of
(Home office address of Company)

has issued to
(Name of Motor Carrier) (Address of Motor Carrier)

the policy of Automobile Bodily Injury Liability and Property Damage Liability Insurance herein described which, by the attachment of the South Carolina endorsement, approved by The Public Service Commission of South Carolina on June 24, 1953, has been amended to provide the coverage or security for the protection of the public required with respect to the operation, maintenance or use of motor vehicles under Certificate of Public Convenience and Necessity or permit issued to the Insured by The Public Service Commission of South Carolina or otherwise under Sections 58-1401 through 58-1501 of the South Carolina Code of Laws, 1952, and amendments thereto, and the pertinent rules and regulations of The Public Service Commission of South Carolina, regardless of whether such motor vehicles are specifically described in the policy or not. The liability of the Company extends to all losses, damages, injuries, or deaths whether occurring on the route or in the territory authorized to be served by the Insured or elsewhere within the State of South Carolina.

Whenever requested by the Commission, the Company agrees to furnish to the Commission a duplicate original of said policy and all endorsements thereon.

The endorsement described herein shall not expire or be cancelled without expiration or cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the Insured giving thirty (30) days' notice in writing to The Public Service Commission of South Carolina at its offices in Columbia, South Carolina, said thirty (30) days' notice to commence to run from the date notice is actually received at the offices of said Commission.

Policy No. Effective from to
(12:01, standard time at the address of
the Insured as stated in said policy)

Countersigned at this day of, 19 ...
.....
Authorized Company Representative.

Rule 88 Amended

Pursuant to §§ 58-1401 through 58-1501, S. C. Code of 1952.

(Filed in the Office of the Secretary of State December 11, 1953.)

Rule 88. Every enclosed (bus) motor vehicle used in the transportation of passengers shall have an emergency door in the rear, or on the side of the vehicle at or near the rear, except such buses as are constructed in accordance with The Interstate Commerce Commission's Rules 193.61, 193.62 and 193.63.

RULES AND REGULATIONS

Tax Commission.

ADOPTED BY THE SOUTH CAROLINA TAX COMMISSION.

Alcoholic Liquors

Pursuant to § 4-6, S. C. Code of 1952.

(Filed Secretary of State's office September 10, 1952.)

The South Carolina Tax Commission hereby rescinds and revokes the following Regulations:

Regulation 14, filed with the Secretary of State on September 18, 1945, amended on November 28, 1945, amendment being filed with the Secretary of State on the same date.

Regulation 15, filed with the Secretary of State on April 18, 1946.

Regulation 16, filed with the Secretary of State on April 18, 1946.

Sales and Use Tax

Pursuant to § 65-1443, S. C. Code of 1953.

(Filed Secretary of State's office April 20, 1953.)

Reg. 14. Retail license.

(c) Notwithstanding what is stated in paragraph (c) hereof, when, in the opinion of the Tax Commission, it is deemed necessary for the efficient administration of Chapter 15, Code of Laws of South Carolina, 1952, as amended, vending machine operators who are engaged exclusively in the business of selling tangible personal property from vending machines, not to exceed ten cents per sale, may be regarded as the agents of the person or firm from whom they obtain the tangible personal property sold by them. No retail license shall be required of such operators in order to make such sales.

Regulation Pertaining to Certain Stamp and Certain Business License Taxes

Pursuant to §§ 65-651, 65-737, 65-771 and 65-851, S. C. Code of 1952.

(Filed in the Office of the Secretary of State February 15, 1954.)

Regulation No. 1

(A) Every person, firm, corporation, club or association that manufactures^o within this State or who first receives within this State manufactured tobacco products, ammunition, playing cards, malt, soft drinks, beer or wine on which the required South Carolina Tax Stamp has not been affixed, shall purchase all necessary tax stamps direct from the South Carolina Tax Commission, and all such purchasers are prohibited from selling or otherwise disposing of South Carolina Tax Stamps to any other person, firm, corporation, club or association.

Orders for stamps shall be sent direct to the License Tax Division, South Carolina Tax Commission, Columbia, South Carolina, on order blanks prescribed for such use and provided by the South Carolina Tax Commission.

(B) No person, firm, corporation, whose place of business is located without the State of South Carolina and who is engaged in the sale of manufactured tobacco products, ammunition, playing cards, malt, soft drinks, beer or wine, shall be permitted to purchase South Carolina Tax Stamps unless and until such person, firm or corporation agrees in writing to furnish the South Carolina Tax Commission any information it may deem necessary concerning the amount of such sales and to whom such sales have been made, and to open for inspection by the South Carolina Tax Commission, its agents or employees any books, records, papers or memoranda, bearing upon the amount of tax payable to the State of South Carolina on account of such sales to South Carolina residents or merchants.

(C) The stamps prescribed for the payment of the documentary stamp tax imposed under Volume 6, Article 2, Chapter 10, of the 1952 Code of Laws of South Carolina shall be purchased only from the South Carolina Tax Commission or from its duly authorized depositories. No use shall be made of such stamps except affixing to the taxable documents and instruments as provided under said Article and the resale thereof is hereby expressly prohibited. Nothing herein shall be construed to prohibit the purchase and resale of stamps by any duly authorized depository.

Regulation No. 2

Every person, firm, corporation, club or association liable for the taxes prescribed by Title 65, Chapter 10, Code of Laws of South Carolina, 1952, shall keep and maintain a complete and accurate record of all transactions to which the taxes may be related, including invoices of purchases, bills of lading, sales, gross receipts, itemized records of all taxable documents, itemized record of all crown, lid, or stamp purchases, and any and all other books, records, papers or memoranda pertaining to any tax imposed by Title 65, Chapter 10 of the 1952 Code. The records required by this Regulation shall be kept and preserved for a period of six (6) years and shall

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be available during such period for inspection or examination as provided by Section 65-856, Code of Laws of South Carolina, 1952.

Regulation No. 3

(Filed in the Office of the Secretary of State March 26, 1954)

Cigarettes displayed for sale in vending machines, where the design of such machine permits of such arrangement, shall be so arranged that the South Carolina Business License Stamp required to be affixed to each package is at all times in plain view and can be easily seen by agents of the South Carolina Tax Commission. In any case where the design or manufacture of any such machine is such that the contents thereof are not readily visible, the owner or person in control of such machine shall leave with some responsible person at the location of such machine, a key thereto so that the contents thereof may be inspected by duly authorized representatives of the South Carolina Tax Commission.

Water Pollution Control Authority, South Carolina.

ADOPTED BY THE SOUTH CAROLINA WATER POLLUTION CONTROL AUTHORITY.

Addition to Rules and Regulations

Pursuant to §§ 70-101 to 70-139, S. C. Code of 1952.

(Filed in the Office of the Secretary of State February 18, 1954)

CLASSIFICATION-STANDARDS SYSTEM FOR THE STATE OF SOUTH CAROLINA

SECTION II:

Rules Applicable to Classes and Standards

5. Where tests for compliance with the fresh water standards for those classifications of B or above disclose that the minimum requirements thereof are being met with regularity at each domestic, industrial, or other water supply intake point, no violation of such classification shall be deemed to exist by virtue of any variation from the requirements thereof which occurs other than at any such intake point, due to the discharge of wastes into any stream so classified, unless the quality of the water at such other point fails to meet the normal requirements of the next lower classification.

Amendment to Rules and Regulations

Pursuant to §§ 70-101 to 70-139, S. C. Code of 1952.

(Filed in the office of the Secretary of State February 18, 1954.)

CLASSIFICATION-STANDARDS SYSTEM FOR THE STATE OF SOUTH CAROLINA

SECTION III:

Established Classes for Fresh Surface Waters and the Standards of Quality and Purity Which Shall be Applied Thereto Class B

Quality Standards for Class B Waters

Items: 4. Dissolved Oxygen.

Specifications: Amend by striking out the words "Not less than 4.5 ppm" and inserting in lieu thereof the words "Not less than 4.0 ppm".

CLASSIFICATION—STANDARDS SYSTEM.

Pursuant to § 70-108, S. C. Code of 1952.

(Filed Secretary of State's office August 26, 1953.)

Section III. Established classes for fresh surface waters and the standards of quality and purity which shall be applied thereto.

CLASS C_a

Waters suitable for fish survival*, industrial and agricultural uses and other uses requiring water of lesser quality.

RULES AND REGULATIONS

Quality Standards for Class C_a Waters

Items	Specifications
1. Floating solids; settleable solids; oil; sludge deposits.	None which are readily visible and attributable to sewage, industrial wastes or other wastes and which measurably increase the amounts of these constituents in receiving waters after opportunity for reasonable dilution and mixture with the wastes discharged thereto.
2. pH.	Range between 6.0 and 8.5, except that swamp waters may range between 5.0 and 8.5.
3. Dissolved oxygen.	Not less than 2.0 ppm.
4. Toxic wastes, deleterious substances, colored or other wastes, or heated liquids.	None alone or in combination with other substances or wastes in sufficient amounts or at such temperatures as to be injurious to fish survival* or impair the waters for any other best usage as determined by the Water Pollution Control Authority for the specific waters which are assigned to this class.

A REGULATION REQUIRING THE SUBMISSION OF ENGINEERING REPORTS AS A PART OF APPLICATIONS FOR THE DISCHARGE OF SEWAGE OR INDUSTRIAL WASTES AND FOR THE CONSTRUCTION OR ALTERATION OF TREATMENT WORKS OR OUTLETS OR FOR THE INCREASE OF LOAD THROUGH EXISTING TREATMENT WORKS OR OUTLETS.

Pursuant to § 70-108, S. C. Code of 1952.

(Filed in the Office of the Secretary of State December 15, 1953.)

I. GENERAL:

Under Title 70, Chapter 3, Water Pollution, Section 70-108, Volume 6 of the 1952 Code of Laws of South Carolina, the South Carolina Water Pollution Control Authority is authorized to adopt such rules and regulations as may be necessary to implement the Law.

II. DEFINITIONS:

A. Person:

"Person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.

B. Waters:

"Waters" shall be construed to include lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction.

C. Marine District:

"Marine District" shall include the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the State.

D. Sewage:

"Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present and the admixture with sewage, as above defined, of industrial wastes or other wastes, as hereafter defined, shall also be considered "sewage."

E. Industrial Waste:

"Industrial waste" means any liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the development of any natural resources.

F. Other Wastes:

"Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, clay, lime, cinders, ashes, offal, oil, tar, dye stuffs, acids, chemicals, dead animals and all other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the State.

G. Pollution:

"Pollution" means the discharge or deposit into the waters of the State of sewage, industrial waste or other wastes, or the effluent therefrom, in such manner, conditions or quantity as

* "Fish survival" as used in this standard means the continued existence of individual fish normally indigenous to waters of this type.

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may cause such waters to be contaminated, unclean, noxious, odorous or impure to such extent as will or may contravene the standards of quality and purity established by the Authority for such waters.

H. Standard or Standards:

"Standard" or "standards" means such measure of purity or quality for any waters in relation to their reasonable and necessary use as may after hearing be established by the Authority pursuant to Sections 70-112 to 70-114 and Sections 70-125 to 70-129.

I. Authority:

"Authority" means the Water Pollution Control Authority of South Carolina.

J. Sewage System or Sewerage System:

"Sewage system" or "sewerage system" means pipe lines of conduits, pumping stations, force mains and all other construction, devices and appliances appurtenant thereto used for conducting sewage, industrial waste or other wastes to a point of ultimate discharge.

K. Treatment Works:

"Treatment works" means any plant, disposal field, lagoon, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

L. Disposal System:

"Disposal system" means a system for disposing of sewage, industrial waste or other wastes, including sewerage systems and treatment works.

M. Outlet:

"Outlet" means the terminus of a sewer system or the point of emergence of any water-borne sewage, industrial waste or other wastes, or the effluent therefrom, into the waters of the State.

N. Shellfish:

"Shellfish" includes oysters, scallops, clams, mussels and other aquatic mullusks and lobsters, shrimp, crawfish, crabs and other aquatic crustaceans.

III. REQUIREMENTS FOR THE SUBMISSION OF REPORTS:

A. Who Shall Submit Reports:

Any person intending to discharge sewage and/or industrial waste into the waters of the State where such wastes are not presently discharged; any person intending to increase the quantity of sewage and/or industrial wastes which are being discharged to such waters on the effective date of this Regulation; any person intending to construct a new outlet, or build, add to, or alter any treatment works for the handling of sewage and/or industrial wastes, shall, before starting such work, apply to the South Carolina Water Pollution Control Authority on the form provided for such application, and shall supply to the Authority a general Engineering Report describing the proposed work and its purpose and the steps which will be taken to control pollution of the waters of the State. Said report shall be prepared in accordance with the general rules which follow. No construction work shall be started until the report has been approved and a construction permit has been received from the Authority. All conditions under which such permit is issued, which are considered by the Authority to be reasonable and necessary, shall be stated in the permit. This regulation does not apply where the projects involved are under actual construction or alteration on the effective date of this order.

B. Professional Engineer Required:

The information submitted in compliance with this Regulation shall be prepared by a person properly qualified to perform engineering work as provided in the South Carolina Code of Laws of 1952, Title 56, Chapter 12. The report shall be submitted to the South Carolina Water Pollution Control Authority, Columbia, South Carolina, and shall be signed by a professional engineer as defined by the above named Act. Said report shall be submitted at least thirty days before approval is desired.

C. Content of Engineer's Report:

To comply with these regulations the report shall include the following:

1. A brief statement describing the proposed project.
2. A statement giving the location of the proposed sewage and/or industrial waste outfall, and either an adequate description of its exact location, or a map showing its location.
3. A statement giving the volume and concentration of sewage and/or industrial waste, as measured or as estimated by some reliable method, which is being or which will be discharged and the extent to which the volume and concentration will be affected by the proposed project.
4. An estimate of the extent to which the quality (expressed in terms of pounds B. O. D. per 24 hr.) of the waste will be improved by the proposed treatment works or by such other or additional steps as will be taken to control pollution.

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The constituents of the waste which may influence its quality may include, but are not necessarily limited to the following:

- a. Oil, floating and settleable solids.
 - b. Acids, alkalies, and dissolved salts.
 - c. Organic matter as measured by the test for bio-chemical oxygen demand, five-day B.O.D. at 20° C., as described in "Standard Methods for the Examination of Water and Sewage".
 - d. Toxic materials.
 - e. Compounds producing taste and odor in water or in the flesh of edible fish.
 - f. Colored materials and dyes.
5. A description of the treatment works which will be provided, including plans and specifications.
 6. An estimate of the rate of low flow of the receiving stream.
 7. An estimate of the extent to which the proposed discharge, whether treated or not, will alter or affect the quality of the receiving water.
 8. Such other pertinent data as may be necessary for a good understanding of the proposal which is being made.
 9. Nothing herein contained, however, shall require the owner of any industrial or municipal establishment to disclose any classified data of the Federal Government or any confidential information relating to secret processes or economics of operation.

IV. THESE REGULATIONS SHALL TAKE EFFECT JANUARY 1, 1954.

Stream Classifications.

A. & J. R. 1954 (48) 2672 to 2675 and certain unpublished filings in the Secretary of State's office should be consulted for classifications of certain streams.

Wildlife Resources Commission, State.

ADOPTED BY THE SOUTH CAROLINA WILD LIFE RESOURCES COMMISSION.

Pursuant to § 28-174, S. C. Code of 1952.

(Filed Secretary of State's office April 7, 1953.)

7. Point of Juncture of Bull Creek and Waccamaw River Established.

To establish the point of junction of Bull Creek and Waccamaw River as being the 40-mile limit referred to in Subsection (1) of Section 28-881, Code of Laws of South Carolina, 1952, relating to the open and closed seasons on shad.

Shad Fishing in Game Zone 6

(Filed in the office of the Secretary of State February 3, 1954.)

That the Division of Commercial Fisheries of the Wildlife Resources Commission is hereby requested to enforce the same laws and regulations in Game Zone 6 as exist in Game Zone 7 with respect to fishing for shad for the 1954 season.

(Filed in the office of the Secretary of State March 17, 1954.)

That the Division of Commercial Fisheries of the Wildlife Resources Commission is hereby requested to enforce the same laws and regulations in all counties in Game Zone No. 6, except Berkeley and Williamsburg, as existed with respect to fishing for shad for the 1952 season.

Shad Season on Big Pee Dee River

(Filed in the office of the Secretary of State March 18, 1954.)

That the Wildlife Resources Department is requested to extend the season on shad from April twentieth to May first on the Big Pee Dee River above the forty-mile limit.

Season for Shad Generally—Extended

(Filed in the office of the Secretary of State March 20, 1954.)

That the Wildlife Resources Commission of this State is requested to extend the time for fishing for shad through Saturday, March 27, 1954.

ADOPTED BY DIRECTOR OF DIVISION OF GAME.

Pursuant to §§ 28-1250.2 and 28-1250.6.

Reciprocal Agreement

(Filed in the office of the Secretary of State April 2, 1954.)

"A Reciprocal Agreement Between The State of Georgia and The State of South Carolina, Concerning The Enforcement of The Fishing Laws in The Area of The Savan-

CODE OF LAWS OF SOUTH CAROLINA

nah River Between The Stevens Creek Dam and The Highway Bridge Between Calhoun Falls, South Carolina, and Elberton, Georgia.

WHEREAS; by Act of the General Assembly of South Carolina (Calendar Number H. Governor on February 15, 1952, (G. Laws 1952, p. 389) the Game and Fish Commission, through its Director, is authorized to enter into a reciprocal agreement with the duly constituted authorities of the State of South Carolina, in furtherance of the enforcement of the fish and game laws in the area hereinafter mentioned, and the adoption of rules and regulations applying uniformly throughout the area; and

WHEREAS; by Act of the General Assembly of South Carolina (Calendar Number H. 1920) entitled "A BILL To Regulate the Fishing and Hunting Upon the Waters Impounded by the Stevens Creek Dam and The Clarks Hill Dam in Game Zone No. 2; to Require Permits Therefor; to Provide for Reciprocal Agreements With Other States, and to Provide for a Penalty for the Violation of This Act." [Act No. 640, Acts and Joint Resolutions, 1954], approved by the Governor on the 18 day of March, 1954, the Director of the Division of Game of the South Carolina Wildlife Resources Department is authorized to enter into a reciprocal agreement with the proper authorities of the State of Georgia for the said purposes; and

WHEREAS, it is the desire of the States of Georgia and South Carolina to adopt and enforce rules and regulations covering the preservation, propagation and taking of fish in and from the waters of the Savannah River, between the Clark Hill Dam and the highway bridge between Calhoun Falls, South Carolina, and Elberton, Georgia, including the waters impounded by the Clark's Hill Dam, but not in streams running into said body of water, so that the laws and rules pertaining to fishing and applying throughout the area shall become as uniform as possible and so that the licenses issued by one State shall be recognized and honored by the agents of the other State;

NOW, THEREFORE, IT IS AGREED, by and between the State of Georgia, acting by and through the Director of its State Game and Fish Commission, and the State of South Carolina, acting by and through the Director of the Division of Game and its Wildlife Resources Department, that:

1. Any resident of the State of Georgia may fish in any of the waters of the area above described, and on the South Carolina side of the boundary line between the two states, if he has obtained and has in his possession while so fishing, the permit and anglers license required by the State of Georgia of its own residents while so fishing, with the exceptions hereinafter set out.

2. Any resident of the State of South Carolina may fish in any of the waters of the area above described, and on the Georgia side of the boundary line between the two States, if he has obtained and has in his possession while so fishing, the permits and licenses required by the State of South Carolina of its own residents while so fishing, with the exceptions hereinafter set out.

3. Since the laws of the State of South Carolina require licenses to be purchased by persons from the ages of twelve (12) to sixty-five (65), and the laws of the State of Georgia require licenses to be purchased by persons from the ages of sixteen (16) to sixty-five (65), any resident of Georgia between the ages of twelve (12) to sixteen (16) shall be required to purchase and have in his possession while fishing in the waters of the area above described on the South Carolina side of the boundary line between the two states a resident license of the State of Georgia.

4. The following rules and regulations, until changed by law or by agreement of the parties hereto, shall govern all fishing in the area:

- (a) It shall be unlawful for any one person to catch or have in possession on any one day on the above described waters or the land adjacent thereto more than ten (10) bass, or more than thirty (30) other game fish, or an aggregate of forty (40) game fish.

- (b) Any person using baskets, seines, trot lines and/or nets for the taking of fish from the said waters are hereby classified as commercial fishermen and regardless of his residence shall comply with the laws, rules and regulations of the State in which the waters of the herein described area may be located in so using such method of taking fish.

- (c) Use of high powered lights, or flashlights of over five cells, for night fishing, is forbidden.

- (d) The catching of game fish in the waters of the area shall be only with hook and line, fly rod, spinning rod, casting rod, pole and line and hand line; not more than two of the above mentioned devices may be used at the same time by any one individual while fishing.

- (e) No person shall have any rifle in his possession in any boat in the subject waters of either State, nor shall any person fire any rifle within one hundred (100) yards from the shore line of such waters.

5. The parties hereto agree that the Rules and Regulations adopted herein and hereafter to be adopted, shall be published in newspapers circulating in the area at least once a

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week for three weeks, before being made effective, so that the citizens and residents of both States may be fully informed thereof at all times.

6. Except as modified or changed hereby, all prevailing laws, rules and regulations of each State shall remain in full force and effect over all waters lying within the boundaries of the respective States.

7. The parties hereto hereby agree that this agreement shall become effective immediately after proper advertising as herein required.

IT IS FURTHER UNDERSTOOD AND AGREED that either State, party to this agreement, may abrogate and cancel the same upon ninety (90) days written notice to the other party of such cancellation, such notice to be delivered to the Director of the Game and Fish Department of the respective State to be so notified.
March 30, 1954.

Pursuant to § 28-1250.4, S. C. Code of 1952.

(Filed in the office of Secretary of State July 29, 1954.)

No basket which exceeds 72 inches in length or 24 inches in diameter shall be used in fishing for non-game fish in the waters of Game Zone 2, impounded either by the Stevens Creek Dam or the Clark's Hill Dam. All such baskets must be cylindrical in shape. All baskets must be properly tagged. Any basket not conforming to such requirement is illegal and subject to confiscation and destruction by qualified Game Wardens, and the users thereof subject to prosecution.

**CODE OF LAWS
OF
SOUTH CAROLINA
1952**

1954 Cumulative Supplement

ANNOTATED

Prepared under the supervision and direction of the
Code Commissioner and the Committee on Statutory
Laws of the General Assembly of South Carolina

IN EIGHT VOLUMES

VOLUME 8

GENERAL INDEX — TABLES

Place in Pocket of Volume 8 of Main Set

**FURMAN R. GRESSETTE
ST. MATTHEWS, S. C.**

**THE R. L. BRYAN COMPANY
COLUMBIA, S. C.
1954**

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BY
THE STATE OF SOUTH CAROLINA

NOTICE

This pocket supplement is not official. At the direction of the Committee on Statutory Laws the Acts as enacted have been edited in various particulars to conform them to the style and arrangement of the Code of 1952 and to make them more readily usable by the practitioner for ordinary work. For further details see the Foreword in the Pocket Supplement to Volume 1.

EXPLANATION ON COMPILATION AND USE OF THIS INDEX

The general index in the Code of 1952 should first be consulted to ascertain if the subject desired is therein, and if the subject is located, then the particular code section number should be consulted in the Supplement to see if it has been affected. This index generally contains references only to new sections and to amended sections when, because of the amendment, the original section has been substantially changed. *Italicized portions of this index indicate references to the Code of 1952.*

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 65-2426 to 65-2430. Amended by 1954 (48) 1686.

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